

5879

H. J. ...
C. ...

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-189580

DATE: March 31, 1978

**MATTER OF: Joyce M. Kingfisher - Transfer - Expenses at Old
Duty Station**

SUMMARY: Employee was notified about November 2, 1976, that she would be transferred in about 4 weeks. After she told landlord of transfer, he ordered her to vacate by December 15, 1976, or be evicted. Agency then issued transfer order effective December 12, 1976, and authorized temporary duty and per diem at old duty station from December 13 to 23, 1976. While per diem may not ordinarily be paid at permanent duty station, employee may be paid expenses, not to exceed temporary quarters allowance, since agency determined she should not suffer financially because of its delay and temporary quarters allowance could have been authorized.

This matter concerns the request of Robert Caswell, a certifying officer, for an advance decision as to the propriety of paying the claim of Joyce M. Kingfisher, an employee of the Bureau of Indian Affairs (BIA), Department of the Interior, for per diem in lieu of subsistence while performing temporary duty at Hugo, Oklahoma.

The submission contains a statement from the Acting Area Director (BIA), that Ms. Kingfisher entered into temporary duty status at Hugo one day after her appointment and authorized lateral transfer from Hugo to a position with BIA in the Dallas Field Employment Assistance Office, Dallas, Texas. The appointment and the accompanying transfer were formalized by documents approved December 13, 1976, with an effective date of December 12, 1976, in accordance with verbal orders of December 10, 1976. The transfer was made pursuant to a request submitted by the Area Employment Assistance Officer on November 2, 1976, for the lateral transfer of Ms. Kingfisher, Employment Assistance Technician, to the position of Vocational Development Specialist, Dallas Field Employment Assistance Office, as soon as possible.

Since it was anticipated by all concerned that this transfer would be completed within no more than two pay periods, Ms. Kingfisher notified her landlord that she would be vacating her apartment in the near future. She reportedly advised the landlord that she

B-189580

would give an exact date as soon as the information became available. During the week of December 6, 1976, Ms. Kingfisher was notified by her landlord that a new renter had been located who had to have the living quarters by December 15, 1976, and that if Ms. Kingfisher had not vacated by that date, she would be evicted.

The Acting Area Director has described the agency's response to Ms. Kingfisher's circumstances as follows:

"The Area Employment Assistance Officer concluded that circumstances beyond her control were about to have an adverse financial impact on Ms. Kingfisher and that, if possible, this should be avoided. After due consideration to various possibilities, the only logical alternative that would not have an adverse financial effect on Ms. Kingfisher seemed to be to transfer her to Dallas almost immediately. The final details were verbally approved and papers were started on Friday, December 10, 1976, for Ms. Kingfisher to transfer to Dallas, Texas, effective December 12, 1976. * * * This is hardly adequate notice for any employee to terminate official and personal commitments, therefore, it was agreed and verbally approved by Ms. Kingfisher, the Talihina superintendent, the Dallas Field Employment Assistance Officer, the Area Employment Assistance Officer, the Personnel Officer, and the Area Director, that starting December 13, 1976, and ending December 23, 1976 Ms. Kingfisher would be detailed from the Dallas Field Employment Assistance Office to Hugo, Oklahoma, with per diem charged to the Dallas Office. It was further agreed by the Dallas Field Employment Assistance Officer that Ms. Kingfisher would be granted annual leave at her request from December 27 through December 30, 1976. A memorandum dated 12-10-76, and a Travel Authorization No. 7G09-01T0205 dated 12-10-76, detailing Ms. Kingfisher from the Dallas Office to Hugo, Oklahoma, were issued by the Area Employment Assistance Officer * * * Ms. Kingfisher and the Dallas Field Employment Assistance Officer were instructed verbally by the Area Employment Assistance Officer that Ms. Kingfisher was to remain in Hugo rather than report to Dallas and return to Hugo, thus saving round trip mileage. The Talihina Superintendent was informed also to this effect."

B-189580

Under the Federal Travel Regulations (FPMR 101-7), May 1973, para. 1-7.6a, per diem in lieu of subsistence may not be allowed at an employee's permanent duty station. In addition, under FTR para. 2-1.4, the effective date of a transfer from one duty station to another is the date on which the employee reports for duty at the new station. These two provisions taken together constitute a requirement that an employee must actually report for duty at the new duty post before it is regarded as the permanent duty station so as to entitle the employee to per diem at the former duty station.

Various Comptroller General decisions have, however, recognized that special circumstances justify exceptions to the general rule that precludes per diem at the permanent duty station. In this regard, the certifying officer asks whether 54 Comp. Gen. 679 (1975) may be applicable to the present circumstances. In that decision an employee had vacated his residence at his former duty station, entered into a real estate contract at his new station and shipped his household goods to the new station in reliance on an official notification of transfer with a transfer date which preceded the dates for which he claimed per diem. The only reason the employee did not accomplish the permanent change of station was an urgent need for his services at his former station.

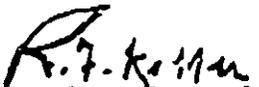
The circumstances in Ms. Kingfisher's case do not bring it within the exceptional circumstances rule in 54 Comp. Gen. 679 (1975). This is so since Ms. Kingfisher's necessity to vacate her residence resulted from her compliance with verbal information instead of a written official notification of transfer. Also, an agency may not designate an employee's official duty station at some place other than the place at which he is expected to perform the preponderance of his duties in order to pay him per diem at such place. B-166181, April 1, 1969; 31 Comp. Gen. 289 (1952); 32 Comp. Gen. 87 (1952).

However, the agency recognized that Ms. Kingfisher should not suffer financially because it had not processed her transfer in a timely manner. The agency could have transferred her effective December 24, 1976, and authorized a temporary quarters subsistence allowance under Federal Travel Regulations (FPMR 101-7) para. 2-5.2 (May 1973). If that had been done Ms. Kingfisher would have been eligible for reimbursement of temporary quarters subsistence expenses for the period she necessarily occupied temporary quarters. Such allowance would have been about the same as the per diem claimed. Based on these circumstances, the agency recommends that we decide this matter in favor of the employee.

B-189580

Since the expenses incurred by the employee were caused by circumstances beyond her control relating to her transfer in the interest of the Government and since the agency had the authority to authorize a temporary quarters allowance incident to the transfer, we agree with the agency's recommendation.

In view of the above, we do not object to payment of subsistence expenses to Ms. Kingfisher for the days between December 13 and 23, 1976, that she was required to occupy temporary quarters. The amount of the payment may not exceed the amount allowable for temporary quarters under Part 2-5 of the Federal Travel Regulations.


Deputy Comptroller General
of the United States