

PLM-2

14000

DECISION



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

FILE: B-198026

DATE: June 11, 1980

MATTER OF: Henry W. Whitley *[Claim For]* Temporary quarters
subsistence expenses *]*

DIGEST: Transferred employee may not receive reimbursement for expenses incident to occupancy of temporary quarters at new duty station where upon arrival at new duty station employee purchased a house under construction and occupied those quarters with intention of making the dwelling his permanent residence. Eligibility for temporary quarters allowance terminates at any time employee or any member of his family first occupies new permanent quarters.

This action results from a request from C. M. Lampman, LCDR, SC, USN, Accounting and Finance Officer, Defense Logistics Agency, for an advance decision on the claim of Henry W. Whitley for a temporary quarters subsistence allowance incident to his change of permanent duty station. *AGCO*

The record shows that Mr. Whitley was transferred from Greenville, Mississippi, to Dyersburg, Tennessee, pursuant to orders effective October 24, 1979. Upon arriving at his new duty station, Mr. Whitley made arrangements to purchase a home which was still under construction. At that time only the bedroom facilities had been completed, but as the certifying officer states, in order to save the Government money Mr. Whitley occupied those quarters not realizing that he might be forfeiting his entitlement to temporary quarters and subsistence allowance.

As a civilian employee of the Defense Logistics Agency, Mr. Whitley's entitlement to Temporary Quarters Subsistence Expenses (TQSE) is controlled by the following definition of "temporary quarters" contained in paragraph Cl3000 of Volume 2 of the Joint Travel Regulations, issued by the Department of Defense to implement 5 U.S.C. § 5724a(a)(3) (1976):

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"* * * Temporary quarters refers to any lodging obtained from private or commercial sources to be occupied temporarily by the employee and/or dependents who have vacated the residence quarters in which they were residing at the time the transfer was authorized, or those occupied while waiting to move into permanent residence quarters. * * *

"C13001 CONDITIONS OF ELIGIBILITY

"1. TEMPORARY QUARTERS SUBSISTENCE EXPENSE ALLOWANCE.

* * * * *

"The temporary quarters for which a temporary quarters subsistence expense allowance is authorized or approved must, in fact, be a temporary place of residence. Quarters occupied upon initial arrival at a new duty station location which factually are permanent type residence quarters into which an employee moves his household goods and continues occupancy indefinitely will not be considered temporary quarters for which expense reimbursement is allowable. * * *"

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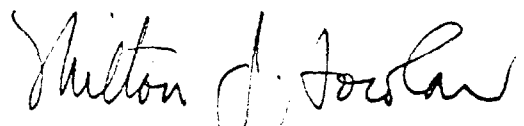
Generally, the determination of whether quarters are "temporary" within the meaning of the regulation is based on the intent of the employee at the time he moves into the quarters. Richard W. Coon, B-194880, January 9, 1980, and decisions cited therein. This Office has consistently held that the rule in regard to the period of eligibility for temporary quarters is that at the time the employee or any

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member of his immediate family occupies new permanent quarters the eligibility terminates. Mr. Lawrence J. Blus, B-192011, December 12, 1978, paragraph 2-5.2f, Federal Travel Regulations (FPMR 101-7) (May 1973). Furthermore, an employee may not be reimbursed subsistence expenses during the period he occupied the residence in which he intends to remain, and the fact that such occupancy results in savings to the Government may not serve as a basis for holding otherwise. Kenneth C. Crawford, B-194065, June 8, 1979, and decisions cited therein. This is true regardless of the fact that the employee's furniture has not been delivered, that utilities and appliances may not have been connected, and despite the fact that the residence still may be under construction and unsuitable for occupancy. Richard E. Hoffman, B-197958, March 31, 1980, and decisions cited therein.

Notwithstanding the several facts which Mr. Whitley contends support a determination that the quarters in question were temporary during the period of his claim, it is clear that when he moved into the new house he had entered into a contract to purchase the house and that it was his intention to make the dwelling the permanent residence of both him and his family. In addition, the terms of the purchase plan, or the presence or absence of Mr. Whitley's household goods in the residence, are immaterial to the determination of whether the quarters occupied were a temporary residence. See Robert N. Havens B-194837, August 8, 1979; and B-178658, August 22, 1973.

Accordingly, we find no legal basis in the facts presented by Mr. Whitley to distinguish his case from those in which reimbursement of temporary quarters subsistence expenses were disallowed and the voucher may not be certified for payment.


For the Comptroller General
of the United States