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DECISION



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

FILE: B-199347

DATE: February 18, 1981

MATTER OF: Luther S. Clemmer

Claim for Reimbursement of

DIGEST:

- (1) Transferred employee may not be reimbursed for temporary quarters subsistence expenses for wife who traveled to employee's new permanent duty station but returned to former residence when employee went on temporary duty in another location since record does not provide objective evidence of intent to vacate former residence.
- (2) After period of temporary duty employee returned to old duty station and remained there on annual leave for 2 weeks. Employee may not be reimbursed for his own temporary quarters for period after he returned to new duty station for while running of 30 consecutive days entitlement to temporary quarters may be interrupted by temporary duty it is not interrupted by period of annual leave and employee's entitlement expired during period of annual leave, prior to dates for which he claims reimbursement.

This is in response to a request for an advance decision from the Chief of the Finance Branch of the Bureau of Mines, Denver, Colorado. At issue is the claim of Mr. Luther S. Clemmer, an employee of the Office of Surface Mining, for temporary quarters subsistence expenses for himself and his wife.

Mr. Clemmer was transferred from Denver, Colorado, to Kansas City, Missouri, and was directed to report to his new duty station on October 22, 1978. In connection with this move he was authorized 30 days of temporary quarters subsistence expenses. Traveling by privately owned automobile, Mr. Clemmer and his wife arrived in Kansas City on October 22, 1978, and occupied temporary quarters. They remained in those

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quarters until November 5 at which time Mr. Clemmer traveled to Washington, D.C., on official business, and his wife returned to their residence in Colorado. Mr. Clemmer returned to Kansas City on December 10, traveled to Denver on official business on December 13, and then remained in Denver on annual leave from December 15, 1978, to January 1, 1979. He returned to Kansas City on January 2, 1979.

Mr. Clemmer claimed temporary quarters subsistence expenses for himself and his wife for the period from October 22, 1978, through November 5, 1978. The Bureau paid that claim in the amount of \$599.43 but subsequently disallowed \$183.75, the amount corresponding to Mrs. Clemmer's temporary quarters subsistence expenses. It did so on the basis that Mrs. Clemmer had not vacated the Clemmers' former residence in Colorado as required by paragraph 2-5.2c of the Federal Travel Regulations (FTR) as a condition of entitlement to temporary quarters. The Bureau also denied Mr. Clemmer's claim for his own continuing temporary quarters subsistence from January 2, 1979, through January 18, 1979, on the basis that the 30 consecutive days of Mr. Clemmer's temporary quarters entitlement was not interrupted by the period of annual leave and, therefore, his entitlement ended prior to the dates for which he claims reimbursement. We concur in the Bureau's determination with regard to each of Mr. Clemmer's claims.

The Federal Travel Regulations, which govern reimbursement of relocation expenses, provide at paragraph 2-5.2c that in order to be eligible for reimbursement of temporary quarters subsistence expenses, the employee and his family must have "vacated the residence quarters in which they were residing at the time the transfer was authorized." There is no definition of the word "vacate" in the travel regulations. However, as we stated in Charles C. Werner, B-185696, May 28, 1976, cited by the Bureau as a basis for its denial of Mrs. Clemmer's temporary quarters subsistence expenses, we generally consider a residence to be vacated when an employee and/or his family cease to occupy it for the purposes intended. In determining whether an employee and his family have

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ceased to occupy a residence we examine the actions taken by the employee prior to and/or after departure from the former residence. If those actions support an inference that the employee intended to cease occupancy of the residence, we generally have authorized reimbursement. Thus, in situations such as the one in question, where the employee and/or his family returns to the former residence, we have authorized payment where the employee's return to his former residence was necessitated by his mother's illness in that locale, his already obtained permanent quarters at the new duty station were not immediately available, and he spent the majority of the period at his parents' residence. Dr. Charles O. Gallina, B-182617, February 4, 1975.

Conversely, where evidence of intent to cease occupancy was lacking, we have not authorized payment of a temporary quarters subsistence allowance. Thus, we denied the allowance where an employee's wife accompanied him to the new duty station, but 6 days later returned to the old residence to arrange for the shipment of their household effects and continued to reside in the old residence until occupancy of the new residence had begun. B-173595, September 17, 1971. In Charles C. Werner, supra, an employee's wife returned to and occupied her former residence after remaining at the new duty station for a week. We denied reimbursement even though the employee stated his wife returned because temporary quarters were unavailable at the new station. The record in that case did not afford a basis upon which we could conclude that the wife would not have returned to the former residence in any event. We summarized our position in Werner by stating that, "Mere statements of an employee's professed intent are not sufficient by themselves to establish entitlement to a temporary quarters allowance and the record here does not provide the objective evidence necessary to support an inference of the requisite intent."

In one of our most recent cases, John M. Mankat, B-195866, April 2, 1980, we denied reimbursement of temporary quarters for an employee's family where the employee sent them home after 1 week at the new

duty station in order to prevent potential vandalism at his former residence prior to settlement. We held that since the family left a fully furnished residence unsure of when it would be sold or when they could move into a new residence, those facts did not support an inference that the family intended to cease occupancy but rather, created the inference that the claimant had taken steps to allow his family to continue their residency, if necessary.

Mr. Clemmer has stated that it is difficult for him to understand how his wife could share temporary quarters with him in Kansas and not be considered to have vacated their former residence. In each of the cases cited above in which we denied reimbursement, the employee's spouse or family had shared temporary quarters with the employee at the new duty station. That, in and of itself, does not establish a cessation of occupancy.

We believe that the facts in this case do not support an inference that Mrs. Clemmer intended to cease occupancy. The record shows that the Clemmers did not move any household goods to Kansas City until January 2, 1979, after Mr. Clemmer's period of annual leave in Denver, and then moved only enough to set up temporary housekeeping. Although it is not clear whether Mrs. Clemmer ever returned to Kansas City, the Bureau has informed us that Mr. Clemmer has transferred back to Denver and now occupies his former residence. In light of these facts we concur with the Bureau's determination that Mr. Clemmer may not be reimbursed for his wife's temporary quarters subsistence expenses.

Mr. Clemmer's second claim is for temporary quarters subsistence expenses for himself for the period from January 2, 1979, to January 19, 1979, in the amount of \$195.75. FTR paragraph 2-5.2a provides for reimbursement of temporary quarters subsistence expenses for "a period of not more than 30 consecutive days while the employee and family necessarily occupy temporary quarters." We have held that the running of the period of consecutive days for occupancy of temporary quarters may be interrupted for circumstances such as temporary duty.

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See 57 Comp. Gen. 700 (1978). In addition, we have allowed reimbursement of temporary quarter subsistence expenses during the time an employee is on annual leave so long as his taking of leave and traveling away from his new duty station did not cause an unwarranted extension of the period of temporary quarters allowance or a delay in occupying permanent quarters. Andrew J. Howard, B-195506, October 26, 1979, and Russell E. Archer, B-184137 December 29, 1975. However, the period of annual leave does not operate to interrupt the running of the 30 consecutive days as would a period of temporary duty. B-163689, March 20, 1968. Therefore, Mr. Clemmer's entitlement to reimbursement of temporary quarters subsistence expenses which began on October 22, 1978, and ran for 2 weeks, started to run again when he ceased performing temporary duty and went on annual leave. Since he was on annual leave for 2 weeks his entitlement to temporary quarters expired before he returned to Kansas City.

In accordance with the above, neither of Mr. Clemmer's claims may be reimbursed.



Acting Comptroller General
of the United States