

DECISION

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

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FILE: B-215228**DATE:** August 15, 1984**MATTER OF:** Johnny M. Jones**DIGEST:**

A transferred employee rented an apartment at his new duty station under a 1-year lease with plans to buy a residence at the end of the lease term and when a house he owns in California is sold. The employee's claim for temporary quarters subsistence expenses for the first 30 days he occupied the apartment may not be paid. His execution of a 1-year lease indicates an initial intent to occupy the apartment on other than a temporary basis. His intent to purchase a home at some time in the future does not change the nontemporary character of his initial occupancy so as to permit reimbursement of temporary quarters subsistence expenses under the rule stated in paragraph 2-5.2c of the Federal Travel Regulations.

An employee's claim for temporary quarters subsistence expenses may not be paid where the facts do not establish that he initially intended to reside only temporarily in the apartment he rented at his new duty station. The employee's intent to purchase a home at some future time does not change the nontemporary character of his prolonged occupancy of an apartment under a 1-year lease.^{1/}

BACKGROUND

Mr. Johnny M. Jones, an employee of the U.S. Customs Service, was transferred from Miami, Florida, to Boston, Massachusetts, in June of 1983. In connection with the transfer he was authorized 30 days' temporary quarters subsistence expenses. Upon arrival at his new duty station Mr. Jones signed a 1-year lease for an apartment in North Quincy, Massachusetts. He has claimed a temporary quarters

^{1/} Mr. M. Joseph Donnelly, Deputy Assistant Regional Commissioner (Financial Management), U.S. Customs Service, has requested an advance decision on a voucher submitted by Mr. Johnny M. Jones.

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B-215228

subsistence allowance for his first 30 days' occupancy of that apartment. Mr. Jones has indicated that he owns a house in California and intends to purchase a residence in the Boston area at the expiration of his 1-year lease and when the house in California is sold.

The agency has asked that we determine Mr. Jones' temporary quarters subsistence expense entitlement in light of revisions to the Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1983). The agency refers specifically to FTR para. 2-5.2c (Supp. 4, August 23, 1982) which provides:

"c. What constitutes temporary quarters. Generally, the term 'temporary quarters' refers to lodging obtained from private or commercial sources for the purpose of temporary occupancy after vacating the residence occupied when the transfer was authorized. However, occupancy of temporary quarters that eventually become the employee's permanent residence shall not prevent payment of the temporary quarters allowance if, in the agency's judgment, the employee shows satisfactorily that the quarters occupied were intended initially to be only temporary. In making this determination the agency should consider factors such as: the duration of the lease, movement of household effects into the quarters, type of quarters, expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters."

ANALYSIS

The payment of subsistence expenses while occupying temporary quarters is authorized by 5 U.S.C. § 5724a(a)(3) (1982), in accordance with the implementing regulations found in FTR, chapter 2, part 5. Subparagraph 2-5.2c thereof was revised effective October 1, 1982, "to permit payment of temporary quarters subsistence expenses when the temporary quarters occupied ultimately become the employee's permanent residence if the agency can establish

B-215228

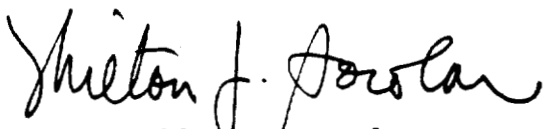
that the original intent was to occupy the quarters temporarily * * *." See 47 Fed. Reg. 44567 (1982). FTR para. 2-5.2f provides that the period of eligibility for temporary quarters shall terminate when the employee or any member of the immediate family occupies permanent residence quarters.

What constitutes temporary quarters is not susceptible of any precise definition, and any such determination must be based on the facts of each case. The question of whether or not quarters are initially (for the first 30 days) temporary is based on the intent of the employee at the time he moves into the lodgings. Charles L. Avery, B-179870, September 26, 1974. In this case Mr. Jones' intent is evidenced by the fact that he executed a 1-year lease and by his statement that he intends to purchase a house in the Boston area when his house in California is sold.

In general, an employee's execution of a 1-year lease is a clear indication that he intends to occupy the rented quarters on other than a temporary basis. We have consistently held that the fact an employee purchased a new residence 11 months or 1 year after his arrival does not demonstrate that the apartment he rented in the meantime was temporary. See Richard W. Coon, B-194880, January 9, 1980, and Myroslaw J. Yuschishin, B-194073, June 18, 1979. Furthermore, we have held that an employee's intention at some future time to purchase a house is too indefinite to support a conclusion that the quarters he occupied upon arrival at his new duty station were in fact temporary. John W. Blanton, Jr., B-205112, February 9, 1982.

CONCLUSION

Although FTR para. 2-5.2c permits reimbursement of temporary quarters subsistence expenses where quarters initially occupied on a temporary basis become permanent, the record in Mr. Jones' case does not show that he initially intended to occupy the quarters only temporarily. He intended to occupy the rented apartment for at least 1 year. Accordingly, since Mr. Jones has failed to demonstrate that he intended to occupy the apartment on a temporary basis, his voucher claiming temporary quarters subsistence expenses in connection with its occupancy may not be paid.


Acting Comptroller General
of the United States