DECISION

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

31831

FILE: B-213827 DATE: August 1, 1985

MATTER OF: Ronald A. Kreizenbeck - Temporary Quarters Subsistence Expenses - Reconsideration

DIGEST:

Employee claims temporary quarters subsistence expenses on the grounds that the quarters he occupied, a house he had contracted to purchase and upon which he had placed an earnest money deposit, were "temporary." Although the employee moved into the house on the advice of an agency official because temporary quarters were unavailable, and even though the contract was contingent upon his obtaining financing, his claim may not be allowed. An employee has no absolute right to temporary quarters subsistence expenses - that allowance is to be used as an expedient only until the employee occupies permanent quarters. Given the evidence presented we believe the employee occupied permanent quarters when he moved into the house in question. Ronald A. Kreizenbeck, B-213827, April 2, 1984, affirmed.

Mr. Ronald A. Kreizenbeck, an employee of the Environmental Protection Agency (EPA), has requested reconsideration of our decision, B-213827, April 2, 1984, by which we denied his claim for reimbursement of temporary quarters subsistence expenses (TQSE). Mr. Kreizenbeck was transferred from Seattle, Washington, to Juneau, Alaska, in February 1982, and, after occupying a hotel for a brief period, he signed a contract to purchase a house, placed an earnest money deposit on it, then rented and moved into that house almost 3 months prior to settlement. In our prior decision we held that the house did not qualify as "temporary quarters" and that Mr. Kreizenbeck could not be reimbursed, even though he stated that he was forced to rent the house because no other temporary lodging was available. For the reasons set forth below, we sustain our disallowance of Mr. Kreizenbeck's claim.

BACKGROUND

In his letter of February 15, 1985, appealing our decision, Mr. Kreizenbeck details his inability to find temporary lodging in Juneau during the time in question, and elaborates on the basis for his belief that he is entitled to reimbursement. As we stated in our decision of April 2, 1984, we have consistently based our determination as to whether an employee's lodgings are temporary or permanent on the intent of the employee at the time he or a member of his family moves into the quarters which later become his permanent residence. Ronald C. Thomas, B-207507, May 17, 1983. Where a transferred employee pays rent for a home he clearly intends to purchase, we have held that the home is not "temporary quarters" as defined in paragraph 2-5.2c of the Federal Travel Regulations, FPMR 101-7 (September 1981) incorp. by ref., 41 C.F.R. § 101-7.003 (1982) (FTR). Stephen A. Webb, B-211004, May 23, 1983.

Mr. Kreizenbeck contends that he moved into the house he subsequently purchased as a last resort and on the advice of an agency official. He points out that at the time of his transfer, housing in Juneau was extremely limited for a number of reasons. Apparently, housing starts virtually stopped in the early 1980's due to a proposal to move the state capital, which is Juneau, to another location. Mr. Kreizenbeck states that the proposal was defeated in November 1982 but the problem had been compounded by a severe winter in 1981-1982 during which the normal construction season was curtailed. More specifically, as we stated in our decision of April 2, 1984, the state legislature convened soon after Mr. Kreizenbeck's transfer thereby straining the availability of lodging to the point that local residents were asked to consider renting their spare rooms. Mr. Kreizenbeck states that he informed the certifying officer of this situation and was advised that if he in fact had no other temporary quarters options, he should rent the house he had already contracted to purchase on February 7, 1982.

Mr. Kreizenbeck states that when he moved into the house on about March 1, 1982, it was not certain that the purchase would be completed since the contract was contingent upon his obtaining financing. As further evidence of this uncertainty he points out that his family did not join him until July 1982. He reports that he continued to look for both temporary and permanent housing but states that temporary lodging was not available until mid-June, when

the state legislature adjourned. Since closing on the house was to take place less than 1 week after that time, Mr. Kreizenbeck decided to remain in the house. He states that he did not make other earnest money deposits on permanent homes because the Alaska Housing Finance Corporation would not process more than one loan application at a time.

Mr. Kreizenbeck's final argument involves FTR paragraph 2-5.2c, which defines temporary quarters. That paragraph was amended by Supplement 4 to the FTR, General Services Administration Bulletin FPMR A-40, August 23, 1982, effective October 1, 1982, to permit payment of temporary quarters subsistence expenses when temporary quarters eventually become the employee's permanent quarters, if, in the employing agency's judgment, the employee shows satisfactorily that the quarters occupied were intended initially to be only temporary. Mr. Kreizenbeck argues that this regulation was adopted to cover situations such as his and should be applied to him even though it was not effective until after his transfer.

OPINION

Mr. Kreizenbeck's primary argument for reimbursement in light of our rule that an employee ceases to occupy temporary quarters when he moves into a house he has decided to purchase, is that he was prevented from occupying temporary quarters due to circumstances beyond his control. In B-174648, January 18, 1972, however, we held that an employee who rented a house (which later became his permanent residence) only because apartments were not available, was not entitled to temporary subsistence expenses absent evidence that he did not intend to stay in the house on a permanent basis. Although Mr. Kreizenbeck has stated that he continued to look for temporary and permanent housing, we have held that the fact that an employee attempts to find different housing after renting quarters which become permanent quarters, is too indefinite to support the conclusion that the quarters were temporary. Johnny M. Jones, 63 Comp. Gen. 531 (1984), affirmed on reconsideration, B-215228, April 12, 1985; Laima A. Skuja, B-207464, November 17, 1982; Elven E. Conklin, B-184565, February 27, 1976. Although we do not doubt Mr. Kreizenbeck's statements concerning the availability of temporary quarters, we hold that his inability to obtain temporary quarters does not affect his entitlement, given the language of FTR para. 2-5.2d which provides that temporary quarters "should be

regarded as an expedient to be used only if or for as long as necessary until the employee concerned can move into permanent residence quarters."

Although Mr. Kreizenbeck alleges that he continued to look for other temporary or permanent quarters after he moved into the house in question on or about March 1, 1982, it must be noted and remembered that he signed a contract to purchase this house on February 7, 1982, and made an earnest money deposit of $2,000 at that time. Thus, almost a month before he began to occupy and pay rent on the house Mr. Kreizenbeck indicated an intent to make the house his permanent quarters. While he emphasizes that the purchase was contingent on obtaining financing, we do not believe this contingency lessens or changes the nature of the intent. Making sales of residential real estate contingent on obtaining financing is standard practice in the cases seen in this Office. In Kenneth O. Dudley, B-205394, April 26, 1982, we denied TQSE to an employee for the period he rented a home he had contracted to purchase even though he ultimately failed to purchase the house because he could not obtain the required financing. We held simply that the house was his permanent residence due to his intent to purchase at the time he moved in.

The Chief of the EPA, Region X, Grants Administration Section wrote on behalf of Mr. Kreizenbeck urging us to allow his claim. In his letter he stated that while our decisions focus on an employee's intention, they do not address the factor of nonavailability of alternate quarters, and the unusual circumstances surrounding Mr. Kreizenbeck warrant special consideration. He comments that he understands that it is the intention of the government to assume the additional expense an employee must incur during permanent moves made for the convenience of the government and points out that Mr. Kreizenbeck had to incur double expense during this time period because his family had to remain in Seattle due to a lack of adequate quarters in Juneau.

As we pointed out in our earlier decision in this case, an employee has no absolute right to the maximum allowable period of TQSE. That entitlement lasts only until the employee occupies permanent quarters. We are satisfied, from the evidence presented, that Mr. Kreizenbeck occupied permanent quarters when he moved into the house in question.

The regulations governing TQSE provide, at paragraph 2-5.2f, that the period of eligibility shall terminate when the employee or any member of his immediate family occupies permanent quarters. The regulations thus recognize that families do not always move together, and specifically prohibit reimbursement when an employee occupies permanent quarters, even if the family has not joined him at the new duty station. The fact that Mr. Kreizenbeck's family did not join him due to the condition of the house does not, therefore, form a basis for granting him reimbursement, especially since we have held that an employee may not be reimbursed TQSE for occupancy of a permanent residence even if it is still under construction and is unsuitable for occupancy. B-174831, April 13, 1972; B-174971, February 28, 1972.

Mr. Kreizenbeck apparently believes that he would be entitled to reimbursement under the revised provisions of the FTR para. 2-5.2c and requests that we apply it to his situation. While we do not believe that those provisions would change the result in Mr. Kreizenbeck's case, that is immaterial since the regulation applies only to transfers on or after October 1, 1982. We have no authority to alter that date.

Finally, Mr. Kreizenbeck asserts that a certifying officer advised him to occupy the house and, we assume, told him he would be entitled to reimbursement of TQSE for that occupancy. Unfortunately, even if the certifying officer promised Mr. Kreizenbeck reimbursement, we cannot allow his claim. It is a well-established principle of law that in the absence of specific statutory authority, the United States is not responsible for the erroneous acts of its officers, agents or employees, even though committed in the performance of their official duties. Schweiker v. Hansen, 450 U.S. 785 (1981); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); German Bank v. United States, 148 U.S. 573 (1893); Banaag S. Novicio, B-215886, October 23, 1984, 64 Comp. Gen. 17.

Our decision of April 2, 1984, is hereby affirmed.

for Milton J. Socolar
Comptroller General
of the United States