

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-215408**DATE:** February 26, 1986**MATTER OF:** George L. Daves - Temporary Quarters
Subsistence Expenses - Househunting
Expenses**DIGEST:**

1. A transferred employee's immediate family joined him at his new duty station several months after he reported for duty, remained there for 26 days, and then returned to their residence at the old duty station. The employee's claim for family travel and temporary quarters subsistence expense is denied since the record does not provide any objective evidence that the family intended to vacate the residence at the old station so as to entitle the employee to be reimbursed.
2. A transferred employee may be deemed to have disestablished his residence at his old duty station effective the date he reported to his new duty station, even though his family did not disestablish their residence at the old station. Thus, under paragraph 2-5.2a of the Federal Travel Regulations (May 1973 ed.), he is entitled to TQSE for himself, not to exceed 30 days.
3. A transferred employee who was authorized a househunting trip, which he had not performed before he reported to duty, may be reimbursed for travel expenses and 6 days per diem for his wife's subsequent househunting trip where the record indicates that she performed such duties prior to her return to the old duty station.

This decision is in response to a request from the Director, Office of Comptroller, United States Merit Systems Protection Board (MSPB). It concerns the

034663 / 129173

entitlement of one of its employees to be reimbursed certain relocation expenses incurred incident to a permanent change of station in April 1980.

BACKGROUND

Mr. George L. Daves, who had been an employee with the United States Department of Housing and Urban Development, stationed in Washington, D.C., became employed by the MSPB on April 6, 1980, in the position of Supervisory Attorney Examiner in its Atlanta Field Office. By Travel Authorization dated April 11, 1980, the MSPB authorized his permanent change of station from Washington, D.C., to Atlanta, Georgia. He was also authorized reimbursement for the transportation of his immediate family (spouse and two children), the use of a privately owned vehicle (POV) as their approved mode of travel; transportation and storage of household goods; the expense of sale and purchase of residences; an advance househunting trip; temporary quarters subsistence expenses (TQSE); and miscellaneous expenses.

On April 12, 1980, Mr. Daves traveled by POV from Washington, D.C., to Atlanta, Georgia, and arrived there the following day. While not specifically stated in the submission, we presume that he reported for duty at the Atlanta Field Office on April 14, 1980.

Mr. Daves' wife and two children did not accompany him at that time. However, on June 30, 1980, they traveled by POV from Washington, D.C., to Atlanta, and arrived there on July 1, 1980. They remained there until July 26, 1980. At that time, Mrs. Daves and the two children returned to their Washington, D.C., residence, where they continue to reside.

In 1981, Mr. Daves filed a travel voucher for his transfer, claiming expenses totaling \$1,009.18. Having already received a travel advance of \$800, he requested reimbursement of an additional \$209.18. His expense voucher contained the following claim items:

1. Employee travel & subsistence (4/12-13/80) - \$73.04
2. Family travel & subsistence (6/30-7/1/80) - \$183.20

3. TQSE for employee and family (7/1-26/80) \$752.94
Total \$1,008.18

Mr. Daves was allowed \$81.79 for his personal travel and travel subsistence. However, his family's travel and the total TQSE claim were disallowed. Thus, the MSPB established that Mr. Daves owed \$718.21, against the \$800 travel advance.

The basis for the disallowance by MSPB was that the travel by the family could not be deemed relocation travel, incident to his permanent change of station, since they remained in Atlanta only 26 days, and then returned to their Washington residence. Further, TQSE payments were not authorized since they resumed occupancy of their fully furnished Washington residence, and there was no other demonstrable evidence that they had vacated the residence.

Mr. Daves states in support of his claim that during the period immediately following his transfer and before his family's move to Atlanta, they had been informed by a Washington real estate agent that because of a soft housing market in the Washington area they should not attempt to sell that residence at that time. It was suggested by the real estate agency that they rent the Washington house and wait for the market to improve. Based on that information, they decided to locate a residence in Atlanta, return to Washington to arrange to move their furniture, and then lease the Washington house or sell it if the market had improved by that time. Mr. Daves contends that his family's travel to Atlanta on June 30 - July 1, 1980, represents their decision to completely vacate the Washington residence and to permanently relocate in Atlanta. He also contends that his wife brought personal items, their childrens' school transcripts, and all medical records, when she traveled to Atlanta on June 30, 1980.

Mr. Daves also contends that the fact that his family returned to Washington on July 26 and remained there was occasioned by circumstances totally unrelated to their actual move to Atlanta and arose after they had arrived. Mr. Daves states that on July 3, 1980, several days after his family arrived, the MSPB issued a vacancy announcement for Chief Appeals Officers at the SES level for seven offices, including the Atlanta Field Office.

He considered the announcement as creating uncertainty regarding his future in Atlanta. As a result, he was reluctant to finalize the purchase of a home in the Atlanta area until his position in that office was clarified, which he attempted to do through a series of memoranda. Mr. Daves goes on to state that he was eventually selected for the position of Chief Appeals Officer in the Atlanta Field Office (January 11, 1981), but by that time mortgage interest rates had escalated to nearly 18 percent and he could no longer afford to purchase or rent a home in the Atlanta area.

DECISION

Section 5724a of Title 5, United States Code, authorizes the reimbursement of certain expenses, under regulations, incurred by an employee for whom the government pays travel and transportation expenses incident to a permanent change of station (5 U.S.C. § 5724(a)). Among those expenses authorized are temporary quarters subsistence expenses for the employee and his immediate family, and a househunting trip. The regulations governing these matters, which were in effect at the time of Mr. Daves' permanent change of station, are contained in chapter 2, Part 5 of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR).

Paragraph 2-5.2c of the FTR provides:

"c. What constitutes temporary quarters. The term "temporary quarters" refers to any lodging obtained from private or commercial sources to be occupied temporarily by the employee or members of his immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized."

In our decisions, we have generally considered a residence to have been vacated when an employee's family ceases to occupy it for the purposes intended. See Charles C. Werner, B-185696, May 28, 1976; Erle B. Odekirk, B-187519, January 26, 1977; and Luther S. Clemmer, B-199347, February 18, 1981. In determining whether the family has ceased to occupy a residence at his former duty station, we examine the action taken by an employee and his family

before and after departure from that residence. The focus of our inquiry, generally, has been whether the employee, in light of all the facts and circumstances, has manifested by objective evidence the intent to vacate the former residence.

Conversely, when evidence to support the employee's intent to cease occupancy of the residence at a particular time is not present, we have not authorized payment. In decision John M. Mankat, B-195866, April 2, 1980, we denied reimbursement of TQSE for an employee's family where they returned to the old duty station after 1 week at the new duty station in order to prevent vandalism at the residence at the former station. In that case, the family returned to a residence which was left fully furnished, unsure of when it would be sold, or when they could move into a residence at the new duty station. In decision John O. Randall, B-206169, June 16, 1982, a similar factual situation was presented. In that case, an employee's family joined him at his new duty station several months after he transferred, remained approximately 1 month and returned to their fully furnished residence at the former station. Some months later, the family actually moved to the new station. We allowed TQSE following their actual move based on a finding that they vacated the former residence at that later time. However, we ruled that his family could not be considered as having vacated the residence during the earlier period since there was no objective evidence of that fact.

The focus of these decisions is that reimbursement for TQSE is based on whether the residence at the former station has been disestablished. In the present case, Mr. Daves contends that his family's travel on June 30, 1980, was to effect their relocation. We cannot so conclude. The facts are that when his wife and children traveled to Atlanta their residence in Washington remained fully furnished, ready for occupancy, and had not been put up for sale or rent. Further, the family actually returned to their old residence after 26 days absence and have continued to reside there.

Accordingly, it is our view that the decisions in Mankat and Randall are controlling. Therefore, Mr. Daves is not entitled to TQSE for his family incident to his transfer to Atlanta.

This conclusion, however, does not entirely defeat Mr. Daves' entitlement to be reimbursed for other expenses in addition to those already approved. Even though we have concluded that his family is not entitled to relocation travel and TQSE due to lack of evidence that they disestablished their residence in Washington, D.C., Mr. Daves, himself, may be deemed to have disestablished his residence in Washington, effective the date he reported for duty at his new station in Atlanta. Since it appears that he was in temporary quarters at least until July 1, 1980, when his family arrived in Atlanta, he would be entitled to TQSE for himself for part of that time. In this regard, it is noted that his Travel Authorization provided for TQSE not to exceed 54 days. Such authorization was erroneous. Under the provisions of paragraph 2-5.2a of the May 1973 edition of the FTR, TQSE entitlements are limited to a 30-day period. Therefore, since Mr. Daves' period in temporary quarters exceeded that limit, he may receive TQSE in his own right for the full 30 days. This would be in addition to his cost of change of station travel and travel per diem.

Also, it is our view that under the circumstances of this case Mr. Daves may be reimbursed for his wife's househunting trip. Under the FTR, an employee's round-trip househunting travel must be fully accomplished before he reports for duty in order to be reimbursed. However, a similar requirement is not imposed on an employee's spouse. Paragraph 2-4.1a of the FTR provides, in part:

"a. * * * Such a round trip by the spouse * * * may be accomplished at any time before relocation of the family to the new official station but not beyond the maximum time for beginning allowable travel and transportation."

The record shows that one of Mrs. Daves activities in Atlanta was househunting. Although the permissible period for househunting was not specifically designated in Mr. Daves' travel authorization, FTR, paragraph 2-4.2 authorized a maximum of 6 days, including traveltime (47 Comp. Gen. 189 (1967)), and that period may be deemed

B-215408

appropriate here. Therefore, Mr. Daves may also be reimbursed the cost of his spouse's roundtrip travel by POV, and her househunting per diem for 6 days.

for 
Comptroller General
of the United States