



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Patsy S. Ricard - Relocation Expenses

File: B-226005

Date: February 29, 1988

DIGESTS

1. Transferred employee may disestablish residence at the old duty station even though the spouse did not disestablish residence there. Thus, the employee is entitled to temporary quarters subsistence expenses. However, the employee may not be reimbursed for the first 10-day period of lodging for which receipts are not available since regulations require receipts for lodging before reimbursement is allowed. Federal Travel Regulations (FTR) para. 2-5.4b.

2. Pursuant to a permanent change-of-station transfer, employee paid lessor of rented apartment one month's rent as required by terms of unexpired lease when employee terminates lease because of job transfer but is unable to give 30-day notice to lessor. Rent paid may not be reimbursed. An underlying premise upon which the lease termination expense benefit is grounded is that the leased quarters were actually vacated. This premise was unfulfilled here because employee continued to occupy the apartment for part of the month and her husband continued to occupy the apartment during the entire month. In any event, FTR para. 2-6.2h, providing for reimbursement of lease termination expenses, requires employee to make reasonable efforts to sublet apartment. Where facts reveal that employee's spouse rented apartment immediately after employee terminated lease, employee failed to make reasonable efforts to sublet.

3. Where transferred employee's spouse failed to join employee at new duty station, the employee's claim for temporary quarters subsistence expense for spouse is denied since there is no evidence that the spouse vacated or intended to vacate the residence at the old station.

4. Transferred employee is not entitled to reimbursement of a rental deposit forfeited at new permanent duty station

041423

where employee terminated employment at new duty station prior to occupancy of rented quarters.

5. Transferred employee is entitled to \$350 miscellaneous expenses allowance where record shows residence was established at new duty station and employee moved household effects from one state to another.

6. Rental expense for self-storage facility for temporary storage of household goods and personal effects may not be reimbursed in the absence of proof of weight of the items stored.

DECISION

This decision is in response to a request from the Accounting and Finance Officer, Defense Contract Administration Services Region (DCASR), Los Angeles, Defense Logistics Agency (DLA). It concerns the entitlement of a former employee to be reimbursed certain relocation and travel expenses incurred incident to a permanent change of station. We conclude that the former employee is entitled to temporary quarters subsistence expenses, but only for lodging for which receipts are submitted and miscellaneous expenses of \$350, in addition to mileage and travel subsistence. Employee is not entitled to temporary quarters subsistence expenses for spouse, to reimbursement of terminated lease expenses, to reimbursement of rent deposit forfeited at new duty station, or to reimbursement for temporary storage of household goods and personal effects.

BACKGROUND

Ms. Patsy S. Ricard, who had been an employee with the Army Missile Command, Redstone Arsenal, Alabama, accepted a position with the DLA in Los Angeles, California. Travel orders authorized reimbursement for the transportation of her spouse; the use of a privately owned vehicle (POV) as her approved mode of travel; delayed dependent travel; transportation and storage of household goods; unexpired lease expenses; temporary quarters subsistence expenses (TQSE); and miscellaneous expenses.

Ms. Ricard departed Huntsville, Alabama, on October 8, 1985, by POV and arrived in the Los Angeles metropolitan area on October 11, 1985. Ms. Ricard states that she first reported to work at DLA on October 15, 1985. Ms. Ricard's husband did not accompany her and never traveled to Los Angeles in connection with Ms. Ricard's permanent change of duty station. He had been authorized delayed travel, as

indicated above, for the purpose of completing the Fall Term ending November 20, 1985, as a part-time lecturer at the University of Alabama in Huntsville. However, on November 7, 1985, Ms. Ricard returned to Huntsville on annual leave. Upon her return to Huntsville Ms. Ricard requested that she be placed in a leave without pay (LWOP) status for the purpose of finding another job. Her request for LWOP effective November 16, 1985, for up to 45 days was granted by DLA in Los Angeles. While in a LWOP status, Ms. Ricard was rehired by the Redstone Arsenal effective December 29, 1985. When DLA was so notified, her appointment with DLA was terminated effective December 28, 1985, without a break in her federal service.

Ms. Ricard filed a travel voucher for her transfer claiming expenses for mileage for her travel by POV from Huntsville to Los Angeles and for travel subsistence (per diem) from October 8 to October 11, 1985. These items were not questioned and have been paid. She also submitted a claim for TQSE for herself for temporary lodging from October 11 through November 6, 1985. The agency disallowed TQSE for the period October 11-20, 1985, since no lodging receipts were presented. Lodging from October 21 through November 6, 1985, for which lodging receipts were presented was allowed.

Other items of expenses claimed which were disallowed included reimbursement for lease termination expenses at the old duty station; TQSE for her spouse; reimbursement of a rental deposit forfeited at the new duty station; reimbursement for rental of self storage facilities at the new station; and a miscellaneous expense allowance.

DISCUSSION

Lodging Expenses - Necessity for Receipts

As a general rule, we have disallowed reimbursement where an employee has not submitted the required lodging receipts and cannot confirm the actual amounts paid for subsistence expenses while occupying temporary quarters at a new duty station. Anthony P. DeVito, B-196950, March 24, 1980; Franklin G. Goss, B-200841, November 19, 1981. The Federal Travel Regulations, FPMR 101-7 (FTR), incorp. by ref., 41 C.F.R § 101-7.003 (1985), provide that "[r]eceipts shall be required at least for lodging . . . expenses" when reimbursement is claimed for temporary quarters expenses at a new duty station. FTR para. 2-5.4b. Thus, claims associated with temporary lodging expenses without lodging receipts may not be allowed and Ms. Ricard is not entitled

to reimbursement for temporary lodging costs for the period October 11-20, 1985.

Lease Termination Expenses

Ms. Ricard has claimed \$320 in unexpired lease expenses. This amount constitutes the rent on her apartment in Huntsville, Alabama, for the period October 1-31, 1985. Ms. Ricard's orders, which she received on September 19, 1985, required her to report for duty on September 29, 1985. She was not notified of them in time to give her landlord 30 days written notice before October 1, even though Ms. Ricard did not depart for her new duty station until October 8, 1985. The lease provided for subletting, assignment, or securing of a replacement only upon written approval and permission of the owner. The lease also provided for job transfer termination of the lease upon 30 days written notice to the landlord from the first of any month, provided further that written evidence of transfer was provided. The lease was apparently in Ms. Ricard's name and not that of her husband. She terminated the lease based upon the job transfer termination clause and thereby had to pay rent for an additional month because she was not able to give 30 days written notice by October 1, 1985. It is the \$320 rent paid for October 1985 for which Ms. Ricard claims reimbursement. However, the record indicates that Ms. Ricard's husband immediately rented the same apartment for the month of October 1985 at a rate of \$420.

This produced the anomalous result of both Ms. Ricard and her husband holding independent leases for the same apartment for the same period of time, giving each the right to fully occupy the premises to the exclusion of all others with both having paid separate and full rent for this period. Further, the record shows that for at least the first eight days of October Ms. Ricard continued to occupy the same apartment.

We note that an underlying premise upon which the lease termination expense benefit is grounded is that the leased premises were actually vacated and the employee no longer continued to receive a benefit from the terminated lease. This was clearly not the case with Ms. Ricard as she continued to occupy the leased premises until October 8th and her husband continued to occupy the apartment without interruption through the entire month of October, along with the household goods of both. Therefore, since the premises were never vacated by the Ricard family during the period of time for which Ms. Ricard seeks reimbursement for rent paid, reimbursement may not be authorized.

Further, even assuming that the premises could be considered vacated by Ms. Ricard after October 8th, we do not find that reasonable steps were taken to mitigate damages as required by paragraph 2-6.2h of the FTR as explained below. The criteria to be applied to determine whether Ms. Ricard is entitled to reimbursement for the rent of \$320 for October 1985 incurred in settling her unexpired lease are set forth in paragraph 2-6.2h of the FTR and in paragraph C14003 of Volume 2, JTR which requires that "(2) such expenses cannot be avoided by sublease or other arrangement"

While expenses incurred or losses suffered in connection with early termination of leases or inability to terminate such leases may be reimbursed under paragraph 2-6.2h of the FTR, implicit in those provisions is the premise that the expenses incurred are reasonable and that the employee attempted to avoid their imposition, or at least attempted to minimize them. Jeffrey S. Kassel, 56 Comp. Gen. 20 (1976); Edward J. Jason, B-186035, Nov. 2, 1976. Compare Norman Mikalac, 62 Comp. Gen. 319 (1983).

Although Ms. Ricard contends that she attempted to sublet the residence in September 1985, the conclusion that such attempts were not seriously undertaken is shown by the fact that her husband, who was occupying the apartment with her, leased the apartment immediately after Ms. Ricard gave formal notice of termination of the lease to her lessor.

Temporary Quarters Subsistence Expenses for Spouse

Section 5724a of title 5, United States Code (1982), authorizes the reimbursement of certain expenses incurred by an employee for whom the government pays travel and transportation expenses incident to a permanent change of station. Among those expenses authorized are temporary quarters subsistence expenses for the employee and his immediate family. The regulations governing these matters are contained in Chapter 2, Part 5 of the 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/her 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 George L. Daves, 65 Comp. Gen. 342 (1986), and cases cited therein. 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. See George L. Daves, supra, and cases cited therein.

The focus of our decisions is that reimbursement for TQSE is based on whether the residence at the former station has been disestablished. In the present case, although Ms. Ricard vacated her apartment and terminated her lease, arranged for shipment of household goods and traveled to her new duty station, her spouse remained in Huntsville. In fact, as indicated above, he immediately rented in his own name the same apartment he and Ms. Ricard had been residing in prior to the termination by her of her lease for the purpose of continuing his residency without interruption. Ms. Ricard's spouse never conducted any travel to Los Angeles during the time of Ms. Ricard's relocation. Since the record is without contradiction that Ms. Ricard's spouse never "vacated the residence quarters in which they were residing at the time the transfer was authorized" as required by FTR para. 2-5.2c, Ms. Ricard is not entitled to TQSE for her spouse incident to her transfer to Los Angeles.

Forfeiture of Rental Deposit at New Duty Station

The record is not clear as to where the premises were located for which Ms. Ricard apparently paid and forfeited a \$125 rental deposit or whether the rental deposit was paid on a temporary residence or permanent quarters. However, the record does contain a reference by Ms. Ricard to a deposit made on an apartment in Anaheim, California. Apparently, the deposit was forfeited when Ms. Ricard returned to Huntsville without ever occupying permanent quarters in the Los Angeles area.

The FTR provides in para. 2-5.4a that only actual charges for meals, lodging, and other items not applicable here, are allowable subsistence expenses. Thus, a rental deposit, which is in the nature of a security deposit, is distin-

guishable from a subsistence expense in the nature of rent for lodging, and therefore is not a reimbursable subsistence expense under the FTR. David E. Nowak, 65 Comp. Gen. 805 (1986).

Miscellaneous Expenses

Miscellaneous expenses may be reimbursed to an employee with an immediate family in the amount of \$700 without support or documentation of those expenses. FTR paragraph 2-3.3a, as amended, in part, by GSA Bulletin FPMR A-40 (Supp. 4, August 23, 1982). Paragraph 2-3.3a also provides that an employee without immediate family is entitled to \$350 in miscellaneous expenses. We have held that where there is a change of residence involving movement of household effects or when the transfer is from one state to another it may be assumed that miscellaneous expenses have been incurred. Franklin G. Goss, B-200841, supra, and cases cited therein.

Paragraph 2-3.2a of the FTR states that a miscellaneous expense allowance will be payable to an employee who has discontinued a residence and established a new residence in connection with a permanent change of duty station. Thus, an employee who transfers to a new duty station and establishes a residence there is entitled to \$350 in miscellaneous expenses even if her family remains at the old duty station in their former residence. The fact that Ms. Ricard's spouse did not abandon the residence at the old duty station does not affect Ms. Ricard's entitlement to miscellaneous expenses for herself. It merely reduces her entitlement from \$700 to \$350. Deward W. Moore, B-187874, May 31, 1977. Even though we have concluded that Ms. Ricard's husband is not entitled to TQSE since he did not disestablish his residence in Huntsville, Alabama, Ms. Ricard did disestablish her residence in Huntsville, effective the date she reported for duty at her new duty station in Los Angeles. Thus, Ms. Ricard is entitled to a miscellaneous expense allowance in the amount of \$350.

Temporary Storage of Household Goods and Personal Effects

Temporary storage of household goods and personal effects is authorized by 5 U.S.C. § 5724(a)(2) (Supp. III 1985), and implementing regulations in FTR, Chapter 2, Part 8. The DLA denied the rental expense for self-storage facility on the basis that Ms. Ricard did not provide any evidence as to what was placed in storage. In this regard, FTR paragraph 2-8.5(b)(1) requires that a "receipted copy of the warehouse or other bill for storage costs is required to support reimbursement." We have held that as long as the

receipted bill on which the claim for storage costs is based shows the storage dates, storage location, and the actual weight of the household goods stored, we will consider such documentation as adequate for reimbursement of temporary storage expenses. However, since Ms. Ricard has not been able to present a bill for the storage costs, her claim for reimbursement of temporary storage of household goods may not be paid. 53 Comp. Gen. 513 (1974); Franklin G. Goss, B-200841, supra; and Kurt P. Goebel, B-191539, July 5, 1978.

for 
Comptroller General
of the United States