



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carl A. Zulick - Temporary Quarters Subsistence Expenses

File: B-226823

Date: August 22, 1988

DIGEST

A transferred employee was authorized and reimbursed for temporary quarters subsistence expenses for 60 days, but the agency questions whether the quarters were temporary based upon the duration of the lease (6 months), the movement of household goods into the residence, the type of quarters (single family dwelling), the lack of clear and definite intent to seek permanent quarters, and the length of time the employee occupied the dwelling (1-1/2 years). We hold that the record supports a determination that, at the time he moved into the dwelling, the employee only intended to occupy it on a temporary basis. He attempted to negotiate a shorter-term lease, he made substantial efforts to locate a permanent residence, he moved his household goods into the residence but did not unpack most of them, and, later, he was uncertain as to whether to purchase a residence since he might be transferred again to another city. Under these circumstances, we conclude that the payment of temporary quarters was proper.

DECISION

This decision is in response to a request by Mr. Jerry K. Yarborough, Authorized Certifying Officer, Bureau of Land Management (BLM), United States Department of the Interior, for a decision as to the propriety of paying temporary quarters subsistence expenses to Mr. Carl A. Zulick, an employee of BLM, incident to a permanent change of official station.^{1/} For the reasons stated later in this decision, we hold that the reimbursement of temporary quarters to Mr. Zulick was proper and in accordance with the applicable law and regulations.

^{1/} Mr. Zulick is represented by Mr. James A. Ferguson, Jr., President, Local 1945, National Federation of Federal Employees.

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BACKGROUND

In late 1984, Mr. Zulick transferred from Meeker, Colorado, to Denver, Colorado, and he was authorized reimbursement of temporary quarters expenses as part of his relocation expense reimbursement. Mr. Zulick signed a 6-month lease on a single family dwelling at 11730 West Atlantic Avenue, Lakewood, Colorado, and he moved into the house on November 26, 1984. His household goods were delivered to the dwelling on the following day.

Mr. Zulick submitted a claim for reimbursement of temporary quarters for a period of 60 days covering the period from November 26, 1984, through February 10, 1985, and BLM paid the claim in the amount of \$2,625. However, the agency obtained additional information concerning the facts surrounding Mr. Zulick's occupancy of this dwelling and seeks repayment of the amount reimbursed to Mr. Zulick for temporary quarters on the grounds that these quarters were permanent rather than temporary in nature.

The agency states that even though Mr. Zulick reports that he was looking for permanent quarters while he occupied this house, he continued to reside at that address after the initial 60-day period had expired. The agency contends that under the applicable provisions of the Federal Travel Regulations and decisions rendered by this Office, these quarters were permanent based upon the following factors: (1) the duration of the lease (6 months); (2) the movement of household effects into the dwelling; (3) the type of quarters occupied (a single family dwelling); (4) the lack of a clear and definitive intent by the employee to seek permanent quarters; and (5) the length of time he occupied these quarters (1-1/2 years). Mr. Zulick purchased a residence in Lakewood, Colorado, in March 1987.

In response to the contentions by BLM, Mr. Zulick states that prior to his transfer, agency officials informed him that he could be reimbursed for expenses incurred while occupying temporary quarters even if he lived in a single family dwelling. Mr. Zulick contends that the agency did not inform him of any limitations on his entitlement until he submitted his travel voucher for payment. He says that it was his intent to occupy this house only until he could locate a suitable single family residence. He argues that his search for a permanent residence was delayed when he reported for duty at Denver due to 4 weeks of travel on business. Mr. Zulick states that he executed a 6-month lease, which he considered to be a short-term lease, and he states that he attempted to negotiate a month-to-month lease

but was unable to do so. The information concerning the negotiation of his lease was confirmed in a letter from Mr. Zulick's former landlord.

With respect to the movement of his household effects into the house, Mr. Zulick states that due to the type and nature of his belongings, i.e., beehives, large indoor trees, beekeeping and hobby supplies, a large freezer filled with wild game, combustible materials, a boat, firearms, and drafting and mechanical tools, he moved them into the dwelling rather than place them in temporary storage. Mr. Zulick reports that most of his belongings were never unpacked while he lived in this house.

As to the type of temporary quarters occupied, Mr. Zulick argues that paragraph 2-5.2d of the Federal Travel Regulations defines temporary quarters as "any lodging obtained from private or commercial sources to be occupied temporarily" He states that this includes not only a motel room or an apartment but also an unattached dwelling in a suburban neighborhood. In regard to an expression of his intent to seek a permanent residence, Mr. Zulick reports that he employed realtors to assist him in locating a permanent, single family residence suitable for his needs, and this information is confirmed by a letter from a real estate agent. The employee also reports that, at the time his eligibility for reimbursement of temporary quarters "was up," BLM was studying moving his place of employment to Fort Collins, Colorado. He states that this discouraged his attempts to purchase a home but, even then, he continued to seek new quarters pending the final outcome. Mr. Zulick states that he was acting cautiously since he had lost \$17,000 on his previous home because he moved when his former office was reorganized.

OPINION

The payment of temporary quarters subsistence expenses is governed by the provisions of 5 U.S.C. § 5724a(a)(3) (1982) and the implementing regulations contained in chapter 2, part 5, of the Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1984). Paragraph 2-5.2c of the FTR (Supp. 10, Nov. 14, 1983) provides that 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. In making this determination, the agency should consider such factors as the duration of the lease, the movement of household effects into the quarters, the type of quarters, expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee

occupies the quarters. See Charles J. Wilson, B-187622, June 13, 1977. See also FTR para. 2-5.2c.

This Office has consistently held that a determination as to what constitutes temporary quarters is not susceptible of any precise definition, and such a determination must be based upon the facts and circumstances involved in each case. The threshold determination as to whether the quarters were initially temporary in nature is based on the intent of the employee at the time he or she moves into the dwelling. Charles L. Avery, B-179870, Sept. 26, 1974.

As to the duration of the lease, we have held that the execution of a 1-year lease on a dwelling at the employee's new duty station is a clear indication that the employee intends to occupy the rented quarters on other than a temporary basis. Johnny M. Jones, 63 Comp. Gen. 531 (1984), affirmed on reconsideration, B-215228, Apr. 12, 1985; Richard W. Coon, B-194880, Jan. 9, 1980. In this case, Mr. Zulick negotiated a 6-month lease and later rented the house on a month-to-month basis. While we have held that the execution of a 1-year lease on a dwelling by the employee at his or her new duty station is a clear indication that the employee intends to occupy the rented quarters on other than a temporary basis, generally, the execution of a 6-month lease is considered to be short-term and, therefore, is not a clear indication that the quarters were permanent in nature. See Sandra J. Samuels, B-226015, April 25, 1988. See also Wilson, supra. We therefore conclude that such actions do not demonstrate an intent on his part to occupy the Atlantic Avenue property on a permanent basis.

With respect to the movement of household effects into the dwelling, we have held that such action is not, by itself, determinative of whether the quarters were temporary or permanent. See Wilson, supra. Here, Mr. Zulick explains that due to the type and nature of his household goods, he moved his personal belongings into the Atlantic Avenue dwelling rather than place them in temporary storage. He states that most of his belongings were never unpacked during the period he lived in the house. We conclude that, under the circumstances, the movement of Mr. Zulick's household effects into the residence does not, standing alone, warrant the conclusion that he intended the dwelling to be his permanent residence at the time he initially occupied the dwelling. Wilson, supra.

In regard to the type of quarters occupied by Mr. Zulick, a single family dwelling, neither FTR paragraph 2-5.2c nor

our decisions preclude a detached single family dwelling from constituting temporary quarters.

With respect to expressions of intent by Mr. Zulick in seeking permanent living quarters, such expressions were clearly manifested when he made intensive, definite, and substantial efforts, with the assistance of realtors, to locate a permanent residence to purchase or lease. See Robert D. Hawks, B-205057, Feb. 24, 1982. See also David R. McVeigh, B-188890, Nov. 30, 1977, where the employee submitted no evidence of his efforts to purchase or rent another home.

As to the length of time Mr. Zulick resided at the Atlantic Avenue address, approximately 1-1/2 years, a presumption arises that occupancy of the residence for this length of time makes such quarters permanent in nature. Paul P. Semola, B-167632, Aug. 20, 1969; John M. Bonvissuto, B-164379, Aug. 21, 1968. In Semola and Bonvissuto, the employees continued to reside in living quarters for a period in excess of 1 year. However, in neither case was there any evidence of any bona fide efforts by the employees to vacate the claimed temporary quarters at any specific time and, therefore, we held that the quarters were not temporary within the meaning of the applicable law and regulations.

In the case before us, while we recognize that Mr. Zulick continued to reside at the Atlantic Avenue address for about 1-1/2 years, his intensive efforts to locate suitable permanent quarters, with the assistance of realtors, over a protracted period of time, and the uncertainty caused by the proposed transfer of his place of employment, clearly demonstrate that he did not intend for the Atlantic Avenue property to be his permanent residence. Hence, we conclude that the presumption created by the occupancy of this house for approximately 1-1/2 years is sufficiently rebutted by the evidence to the contrary showing that such residence was only temporary in nature.

CONCLUSION

The facts before us reasonably establish that, at the time Mr. Zulick first occupied the single family dwelling on West Atlantic Avenue, he intended to remain there only for a temporary period of time. Therefore, we conclude that the

dwelling constituted "temporary quarters" for Mr. Zulick for which he was entitled to reimbursement of temporary quarters subsistence expenses.

Wilton J. Fowler
for Comptroller General
of the United States