

**Matter of:** Patrick D. Dorsey  
**File:** B-253791  
**Date:** December 21, 1993

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**DIGEST**

Employee requested an extension of temporary quarters subsistence expenses (TQSE) of 60 days beyond the initial 60-day period authorized by the agency because he had been unable to take a househunting trip, which had delayed his locating a residence, and he wished to add attic flooring and construct an outbuilding at his new residence before moving in. The authorizing official approved the extension, but agency travel management officials allowed only an additional 35 days to cover the period through settlement on August 29 plus 5 more days to permit moving in after the Labor Day holiday. The disallowance of the additional 16 days of TQSE while attic flooring was installed and an outbuilding constructed was in accordance with agency regulations which exclude time for refurbishing, and was not arbitrary or an abuse of discretion. Therefore, the agency's disallowance of the remaining 16 days of TQSE is sustained.

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**DECISION**

We are asked whether Mr. Patrick D. Dorsey, an employee of the Internal Revenue Service (IRS), Department of the Treasury, is entitled to an additional 16 days of temporary quarters subsistence expenses (TQSE) the agency's Office of Travel Management and Relocation has determined was improperly granted. We sustain the disallowance of the 16 days.

**BACKGROUND**

Mr. Dorsey transferred from Dallas, Texas, to Washington, D.C., incident to which he was authorized reimbursement of TQSE for 60 days. He commenced occupancy of temporary quarters on May 28, 1991. On August 28, 1991, Mr. Dorsey

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<sup>1</sup>The request was submitted by the Chief, Office of Travel Management and Relocation, IRS.

made a written request for an additional 60 days of TQSE beginning from the expiration of the first 60 days at the end of July. He explained that he sold his old residence in a relatively brief period of time and, therefore, he and his family were required to move into temporary quarters sooner than he had expected. He also stated that his work schedule prevented him and his wife from making a househunting trip to Washington and therefore, they were unable to seek permanent housing until July 22, 1991, the date he reported for duty. Mr. Dorsey reported that he purchased a residence on August 29, 1991, but he did not anticipate moving in until about September 19 since the house and storage area of his former residence in Dallas was nearly four times the size of the newly purchased residence and, therefore, he was required to do some minor construction to accommodate his household furnishings. Mr. Dorsey's request for an extension of up to 60 days was approved by his supervisor. He was reimbursed TQSE through September 19, the date he moved out of temporary quarters into his new residence.

Upon review of Mr. Dorsey's travel vouchers, IRS travel management officials determined that the additional TQSE beyond the initial 60 days TQSE should be limited to cover the 35 days through September 3. In doing so, they acknowledged that since Mr. Dorsey purchased the new residence on August 29, 1991, he was unable to move his household effects into the residence until September 3, 1991, the day after the Labor Day holiday. However, they disallowed the remaining 16 days he claimed through September 19 based upon the provisions of the Internal Revenue Manual (IRM) 1764, § 530(2) which state that:

"The length of time needed for the occupancy of temporary quarters will vary, depending upon family circumstances, and should be determined based on practical and prudent motives. Events pertaining to the availability of a permanent residence should be scheduled so that the maximum period of 60 days is not the targeted time for occupying temporary quarters, but the exception. (Temporary quarters may be used only until permanent quarters are available for occupancy; this does not include time for refurbishing.)"  
(Emphasis added.)

In the travel management official's view, the additional 16 days spent in minor construction, which Mr. Dorsey describes as installing attic flooring and building an out-building, constitutes "refurbishing."

## OPINION

An agency may pay a transferred employee subsistence expenses for himself and his immediate family for an initial period of not more than 60 days while occupying temporary quarters and may grant an extension, not to exceed 60 additional days, provided the agency determines that there are compelling reasons for the continued occupancy of temporary quarters, due to circumstances which have occurred during the initial 60-day period of occupancy and which are beyond the employee's control and acceptable to the agency.

Under paragraph 302-5.2(a)(2)(ii) of the Federal Travel Regulation (FTR), an agency may grant an extension of up to 60 days only where there is a demonstrated need for an extension due to circumstances beyond the employee's control occurring within the initial 60-day period of temporary quarters. Examples of compelling reasons include the inability of an employee to occupy a new residence due to unanticipated problems such as a short delay in settlement on or in construction of a new residence. Agency determinations as to the initial period and any extension are to be made on an individual-case basis. However, authorizations of extensions are to be held to a minimum, and the specified time limits are maximum periods with normal occupancy being expected to average much less.

Here, although the authorizing official approved an additional 60 days of TQSE, upon review of Mr. Dorsey's travel vouchers, IRS travel management officials, while recognizing Mr. Dorsey's obtaining permanent housing without the benefit of a househunting trip, allowed only an extension of 30 days beyond the initial 60 days, plus 5 more days to cover the time from settlement through the day after the Labor Day holiday. The remaining 16 days were disallowed based upon the previously cited IRS regulation which prohibits reimbursement for temporary quarters occupancy during the time the employee's permanent quarters are being refurbished.

We have interpreted the temporary quarters regulations in the FTR as granting an agency broad discretion to limit the period of temporary quarters, and we will not challenge an agency's determination absent evidence that it was

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<sup>2</sup>5 U.S.C. § 5724(a)(3) (1988); FTR, 41 C.F.R. § 302-5.2(a)(2) (1992).

<sup>3</sup>FTR, 41 C.F.R. § 302-5; Rosemary A. Smith, 69 Comp. Gen. 95 (1989).

arbitrary, capricious, or contrary to law.<sup>4</sup> We have held that temporary quarters are to be regarded as an expedient to be used only so long as is necessary.<sup>5</sup> While we have authorized TQSE when the permanent residence could not reasonably be occupied as living quarters by the employee because the utilities were disconnected, or necessary furniture was unavailable, that was not the case here. While it may have been inconvenient for Mr. Dorsey to occupy the residence while the attic flooring was being installed and the outbuilding was being constructed, it does not appear that those factors would have prevented him from doing so.<sup>6</sup>

In light of the discretion granted to the IRS to limit the period of temporary quarters, and where, as here, an extension of 35 days beyond the initial 60-day period of occupancy has been granted to Mr. Dorsey, we find no basis to conclude that the IRS's final determination not to grant the remaining 16 days of temporary quarters occupancy was arbitrary, capricious, or an abuse of discretion.

Accordingly, we sustain the IRS's disallowance of reimbursement for the additional 16 days of TQSE Mr. Dorsey claims.

James F. Hinchman  
General Counsel

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<sup>4</sup>See Robert R. Hollister, B-238601, Oct. 4, 1990. See also Stephen P. Szarka, B-247426, June 4, 1992; John J. Goglia, B-235177, Aug. 23, 1989; Alexander Bell, B-201382, Aug. 26, 1981.

<sup>5</sup>See Den L. Zane, B-194159, Oct. 30, 1979; and FTR, 41 C.F.R. § 302-5.2(a)(3).

<sup>6</sup>See William D. Dudley, 67 Comp. Gen. 310 (1988), Zane, supra; Irving R. Warnasch, B-193885, June 8, 1979.