



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Roland R. Leaton

File: B-261168

Date: July 18, 1995

DIGEST

Federal Travel Regulation provision governing reimbursement of temporary quarters subsistence expenses grants agencies discretion, in cases where transferred employee claims temporary use of permanent-type quarters at new duty station, to determine whether employee intended to occupy those quarters on a temporary basis only. To qualify for reimbursement of these expenses, employee has burden of providing evidence of such intent satisfactory to agency. Agency's determination that evidence is insufficient will not be overturned unless it lacks reasonable basis in the record and thus constitutes an abuse of discretion. Agency's determination upon appeal in this case that employee failed to provide satisfactory evidence of intent to occupy permanent-type quarters only temporarily is not without substantial support in the record, and, therefore, is affirmed.

DECISION

BACKGROUND

An employee of the Bureau of Land Management (BLM), Mr. Roland R. Leaton, appeals our Claims Certificate Z-2869062, dated May 11, 1994, denying reimbursement of temporary quarters subsistence expenses incident to a permanent change of station from Bixby, Oklahoma, to Elkhart, Kansas. We sustain the disallowance.

Mr. Leaton arrived for duty in Elkhart on June 16, 1993. He was authorized 30 days' subsistence expenses beginning June 16, 1993. From June 16 through June 29, 1993, he resided in a motel in Elkhart. On June 30, Mr. Leaton moved into a single family residence at 831 S. Stanton Street, Elkhart, which he rented on a day-to-day basis through August 19, 1993. His wife joined him on July 4, 1993. In July, Mr. Leaton requested and was granted a 30-day extension of the subsistence expense allowance covering the period from July 16 to August 14, 1993. He was reimbursed for the first 30 days by offset against his travel advance.

Mr. Leaton asserts that he began his search for permanent housing in June. On August 2, 1993, he inquired at the First National Bank of Elkhart about financing for purchase of real estate, but was turned down because of a negative credit report on file at the bank.

On August 12, 1993, Mr. Leaton approached the rental agent for the residence he was occupying to ask about a long-term lease for this residence. On August 15, 1993, Mr. Leaton and the agent agreed, based on a draft drawn up by the agent, on a long-term lease effective August 20, 1993, for occupancy of the residence at 831 S. Stanton, with an option to buy at a later date. The lease was signed September 24, 1993. Mr. Leaton took delivery of his household goods on August 27, 1993. He and his family continue to live at this residence.

On October 12, 1993, Mr. Leaton requested reimbursement of expenses he incurred during the second 30 days' temporary quarters (July 16, 1993 - August 14, 1993). BLM denied the claim for temporary quarters for the second 30 days when its audit of the claim revealed that Mr. Leaton had entered into a lease agreement and option to purchase the same residence claimed as temporary quarters. BLM also issued a Bill of Collection to Mr. Leaton for the expenses he had been reimbursed for the period beginning June 30, 1993, the day he moved into the house on S. Stanton.

Mr. Leaton appealed to GAO stating that prior to August 20, 1993, the effective date of the lease/option to purchase agreement on the house, he had not intended to make the house his permanent residence. Our Claims Group denied his claim on the basis that the record supported BLM's determination that Mr. Leaton failed to provide sufficient evidence of an intent to occupy the living premises on a temporary basis. Mr. Leaton now appeals the denial of temporary quarters expenses, continuing to assert that he did not intend to make the house his permanent residence until August 1993.

ANALYSIS AND CONCLUSION

Chapter 302, Part 5, Section 2(c) of the Federal Travel Regulation (FTR) (41 C.F.R. § 302-5.2(c) (1994)) states that occupancy of temporary quarters that eventually become the employee's permanent quarters shall not prevent payment of the temporary quarters allowance if, in the agency's judgment, the employee shows satisfactorily that occupancy of the quarters was intended initially to be only temporary. The employee has the burden of providing evidence of such intent which is satisfactory to the agency. The agency's determination that the evidence is insufficient to show such intent will not be overturned by our Office unless it lacks any reasonable basis in the record and thus constitutes an abuse of discretion. Richard A. Alschuler, 71 Comp. Gen. 389 (1992) and Arthur Obester, B-249174, August 7, 1992.

When reviewing the agency determination, we have looked to the factors listed in FTR § 302-5.2(c) in considering whether an employee who occupies permanent-type quarters intends to do so only temporarily, recognizing that the employee has the burden of providing convincing evidence of such intent. See, e.g., Myroslaw J. Yuschishin, B-194073, June 18, 1979, and decisions cited. We have considered such factors as the type of quarters, the duration of a lease, the movement of household effects into the quarters, efforts to secure a permanent residence, expressions of intent, and any other pertinent facts and circumstances surrounding the occupancy. If on the basis of these considerations it is objectively determined that at the time the employee moved into the residence, he clearly manifested the intent to occupy the quarters only on a temporary basis, we have allowed payment of subsistence expenses, even though the quarters could be occupied permanently or did, in fact become permanent. See Robert D. Hawks, B-205057, February 24, 1982, and Elven E. Conklin, B-184565, February 27, 1976.

In Mr. Leaton's case, it is clear that BLM performed the analysis required by FTR paragraph 2-5.2c, supra, and applied the factors set forth in that paragraph. Although he claimed to have actively sought permanent housing since June, Mr. Leaton did not provide documentary evidence of any type to substantiate house hunting activities. While he points to his attempt to secure financing for purchase of real estate from the First National Bank of Elkhart as evidence he was in the market for a permanent residence, the evidence that he sought the loan for any property other than the South Stanton Street residence is not persuasive.¹ In addition, BLM found that the South Stanton Street property was on the market for lease or sale at the time he took residence. BLM confirmed that rentals were available in Elkhart at much less than the amount Mr. Leaton paid for renting this residence. Additionally, the agency determined that Mr. Leaton's claims for meals were excessive and unreasonable. Considering these factors, we conclude that the agency's original determination—that it was unconvinced by Mr. Leaton's offering of evidence that he clearly intended to occupy the residence on a temporary basis only—is not without substantial support in the record before the agency.²

¹The bank initially indicated in a December 1993 letter to BLM that it understood Mr. Leaton's request was for a loan to purchase the S. Stanton Street residence. Later, in January 1995, at the request of Mr. Leaton, the bank sent a second letter noting that the assumption made in the first letter that Mr. Leaton was interested in the specific property may have been in error.

²We note also that Mr. Leaton's household effects were tentatively scheduled to be delivered in Elkhart on August 13, 1993. When he was turned down for financing, Mr. Leaton informed the moving company on August 9, 1993, that he needed to postpone delivery. Clear evidence of any possible permanent residences for

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We have carefully reviewed additional information submitted to our Office by Mr. Leaton as a part of his appeal. The additional correspondence consists of a letter from an attorney representing Mr. Leaton with attachments. We conclude that this additional information is insufficient to call into question the basis of the BLM determination. We also asked BLM to review this correspondence; the agency found no basis in it for reconsidering its original determination.

Accordingly, the denial of temporary quarters subsistence expenses after June 29, 1993, is sustained.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel

²(...continued)

Mr. Leaton other than the South Stanton Street address is not provided in the record. There is no suggestion in the record that Mr. Leaton planned to place his household goods in storage pending completion of his house-hunting. A planned delivery at the S. Stanton address is further indication of an intent to make it more than a temporary residence.