

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-184836

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DATE: NOV 28 1975 9-7658

MATTER OF: Neil D. Wilton - Temporary Quarters Allowance

DIGEST:

Transferred employee and his family stayed at motel at new station from June 22, to July 3, 1974, when he moved into rented house which employee purchased. Fact that settlement was not made on rented house until August 9, 1974, does not entitle employee to temporary quarters expenses allowance after he occupied house until July 21, 1974, since record indicates that he intended to occupy house permanently after he moved in.

This decision concerns a request by Senator Frank Church dated August 18, 1975, on behalf of Neil D. Wilton for reconsideration of the disallowance by our Transportation and Claims Division of Mr. Wilton's claim for temporary quarters expenses allowance incident to a transfer of station. The expenses claimed covered a period after Mr. Wilton and his family moved from a motel to a house which he bought but occupied on a rental basis before settlement was made.

Mr. Wilton disagrees with the disallowance of his claim and asserts he should be reimbursed \$793.95 for temporary quarters subsistence expenses in connection with the rental and occupancy of the residence within the 30-day period after he reported to his new station. He requests review of the denial of his claim. It is Mr. Wilton's contention that rental is a temporary form of residency as opposed to the permanent form of residency implied by owning. He states, in addition, that a definition of "temporary quarters" would save unnecessary confusion in cases similar to his.

The record shows that pursuant to Travel Order No. 16164039, dated June 3, 1974, Mr. Wilton was transferred from Lincoln, Nebraska, to Boise, Idaho. In connection with this transfer Mr. Wilton was authorized temporary quarters subsistence expenses. Upon arrival in Boise, Idaho, Mr. Wilton and his family stayed at a motel from June 22, 1974, until July 3, 1974, when they moved into a residence on a rental basis. Mr. Wilson purchased this same residence and settlement took place on August 9, 1974. The

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record also shows that Mr. Wilton's claim for temporary quarters subsistence expenses for the 30-day period was allowed only for the period commencing June 22, 1974 and terminating July 3, 1974, on the basis that on the latter date he occupied permanent residence quarters. The amount for which reimbursement is sought, \$793.95, represents Mr. Wilton's temporary quarters subsistence claim from July 3, 1974, until July 21, 1974.

Subsections 2-5.2 c,d, and f of the Federal Travel Regulations (FFMR 101-7) (May 1973), issued by the General Services Administration to implement 5 U.S.C. § 5724a (a)(3) (1970) provide as follows:

"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." (Emphasis supplied.)

"d. Authorizing less than maximum time. The specified time limits are maximum periods, and the normal length of necessary occupancy of temporary quarters is expected to average much less. Temporary quarters should be regarded as an expedient to be used only if or for as long as necessary until the employee concerned can move into permanent residence quarters." (Emphasis supplied.)

* * * * *

"f. Computation of 30 or 60 days allowable. In computing the length of time allowed for temporary quarters at Government expense under the 30-or 60-day limitations specified herein, such time will begin for the employee and all members of his immediate family when either the employee or any member of the immediate family begins the period of use of such quarters for which a claim for reimbursement is made and the time shall run concurrently. The employee may occupy temporary quarters at one location while members of the immediate family occupy quarters at another location.

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The period of eligibility shall terminate when the employee or any member of his immediate family occupies permanent residence quarters or when the allowable time limit expires, whichever occurs first." (Emphasis supplied.)

The fact that Mr. Wilton rented the residence in question from July 3, 1974, until August 9, 1974, the date on which the closing of the purchase of the residence was effected, does not conclusively determine, under the above-quoted subsections of the Federal Travel Regulations, that the residence occupied was "temporary quarters" rather than "permanent residence quarters." Our Office has consistently held that the type of residence occupied, i.e., temporary or permanent, is based on the intent of the employee at the time he or a member of his family moves into the quarters which later become his permanent residence. An employee may not be reimbursed temporary quarters subsistence expenses after he occupies the residence in which he intends to remain, notwithstanding that rent is being paid.

In those instances where the employee has demonstrated through pertinent facts and circumstances that his intention was to occupy a residence on a temporary basis our Office has allowed temporary quarters subsistence expenses. In B-175913, June 19, 1972, our Office allowed reimbursement for temporary quarters subsistence expenses where there was evidence on the record that the employee involved had reasonably demonstrated his intent to use the quarters only on a temporary basis. However, in the absence of evidence in the record indicating that an employee did not intend to stay at a residence on a permanent basis our Office has denied reimbursement for temporary quarters subsistence expenses. B-174648, January 18, 1972; B-177244, February 20, 1973.

The record contains no evidence to indicate that Mr. Wilton and his family, on and after July 3, 1974, occupied the residence in question other than as a permanent residence quarters. The only statement in the record bearing upon intent is contained in a letter of December 5, 1974, to the Comptroller General in which Mr. Wilton states:

"* * * From 7/3/74 to 8/9/74, we expended our time, energy and resources living from day to day as we

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sought to negotiate the purchase of a home
in the Boise area. * * *

The record, however, contains no information supporting this statement. Moreover, the language of this statement makes it impossible to determine whether it refers to a residence other than the one Mr. Wilton was then renting. The reasonable presumption is that the statement is a reference to a contractual commitment to purchase the residence he was then renting. This would furnish no basis for his claim for reimbursement. See B-174971, February 28, 1972, and cases cited therein.

Accordingly, the action of our Transportation and Claims Division in disallowing Mr. Wilton's claim for \$793.95 for temporary quarters subsistence expenses from July 3, 1974, to July 22, 1974, is hereby sustained.

With regard to Mr. Wilton's inquiry concerning a definition of "temporary quarters" this Office has been and is of the opinion that, in view of the many different situations which arise pertaining to this term, it is very doubtful that the regulations, quoted above, could be more precise in that regard. See 47 Comp. Gen. 84 (1967).

Paul G. Dembling

Dating

Comptroller General
of the United States