

DECISION

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

61502

FILE: B-185983

DATE: SEP 17 1976 98021

MATTER OF: James R. Drayer--Claim for temporary quarters allowance

DIGEST: Employee, incident to transfer to new duty station, moves into residence he had contracted to purchase. Employee claims temporary quarters allowance for 30 days while paying rent to seller prior to settlement on house. Claim may not be allowed where employee's intent was clearly to occupy quarters on a permanent basis.

This action is in response to the request for an advance decision from May V. Smith, an authorized certifying officer of the Department of Housing and Urban Development (HUD), reference 9AF, regarding payment of the voucher of Mr. James R. Drayer, an employee of HUD, for temporary quarters allowance claimed in connection with a permanent change of duty station.

The record indicates that Mr. Drayer, pursuant to his transfer to Sacramento, California, contracted to purchase a house on May 17, 1975, and agreed to pay the seller \$10 per day for rent beginning June 30, 1975. Although the record is not clear on this point, it appears that Mr. Drayer and his wife arrived at the new duty station on June 30, 1975, and the employee has claimed temporary quarters allowance for 30 days until July 30, 1975, when settlement was held on the new house. The administrative office denied the claim citing a decision of this Office, B-160904, March 7, 1967. Mr. Drayer questions whether the holding of the decision has been modified over the intervening years.

The authority for the payment of subsistence expenses while occupying temporary quarters is contained in 5 U.S.C. 5724a (1970), and the implementing regulations, Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973). As noted by the authorized certifying officer, para. 2-5.2f of the Federal Travel Regulations provides that the employee's period of eligibility for temporary quarters allowance terminates when permanent residence quarters are occupied. In addition, para. 2-5.2c provides:

B-185983

"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 added).

Our Office has consistently held that a determination as to what constitutes temporary quarters must be based on the facts in each case. B-183829, January 2, 1976; and B-182107, February 4, 1975. Thus, in past decisions we have considered such factors as the duration of a lease, the movement of household effects into the quarters, the type of quarters, any expressions of intent, attempts to secure a permanent residence, and the period of residence in the quarters by the employee. See B-185440, July 13, 1976, and cases cited therein. These factors are considered in our attempt to determine whether the intent of the employee was to occupy the quarters on a permanent or temporary basis.

We have held, under certain circumstances, that temporary quarters allowance may be paid where an employee manifested an intent to only temporarily occupy the quarters even though such quarters subsequently became permanent. See 53 Comp. Gen. 508 (1974); B-176367, August 4, 1972; and B-174648, January 18, 1972. However, in the present case it appears clear that at the time Mr. Drayer moved into the quarters for which he is claiming temporary quarters allowance, he did not intend to occupy it on a temporary basis. In that regard, our decisions have held that temporary quarters allowance may not be paid after an employee has moved into a house he intends to purchase, even though settlement for the house has not taken place. B-185440, supra; B-183641, October 9, 1975; and B-183636, July 31, 1975.

Accordingly, the voucher may not be certified for payment.

R.F.KELLER

/Deputy Comptroller General
of the United States