

DOCUMENT RESUME

02586 - [A1812861]

[Real Estate and Temporary Quarters Expenses]. B-187834. June 21, 1977. 5 pp.

Decision re: Col. Calvin Reese, USAF; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Air Force: Ellington AFB, TX.

Authority: 5 U.S.C. 5724 (i). 50 Comp. Gen. 374. B-185695 (1976). B-173783.141 (1975). F.T.R. (FPMR 101-7). Finn v. United States, 192 Ct. Cl. 814 (1970).

Lt. Col. C. G. Mieman, an Accounting and Finance Officer, requested a decision concerning a claim by an Air Force officer for real estate and temporary quarters expenses incurred incident to a permanent change of station as a civilian employee. Civilian Air Force employee agreed to remain in Government for a year following transfer, but entered Air Force active duty in less time. As he was still a Government employee and did not breach transportation agreement, real estate expenses were reimbursable. Expenses of 6-week apartment lease, suitable only for transferred claimant whose family remained at old station, were reimbursable as quarters were temporary. (DJM)

Peter Iannicelli
Civ. Pers.

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DECISION



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

FILE: B-187834

DATE: June 21, 1977

MATTER OF: Calvin Reese - Real Estate and Temporary Quarters Expenses

DIGEST:

1. Civilian employee of Air Force signed Transportation Agreement agreeing to remain in Government service for 12 months following effective date of transfer. Employee entered on active duty with Air Force less than 12 months after transfer. Transportation agreement has not been breached since employee remained in Government service, as required by 5 U.S.C. § 5724(1), and, therefore, real estate expenses may be reimbursed.
2. Employee signed 6-week lease on apartment, suitable only for himself, at new duty station. Employee had intended to move to new apartment, suitable for his entire family, upon dependents' arrival. However, family did not move to new station since sale of old residence did not take place before employee was called to active duty. Fact that employee did not intend to buy house at new duty station or secure lodging for indefinite period does not negate temporary nature of first apartment. Accordingly, temporary quarters subsistence expenses may be reimbursed.

This action is in response to the request for an advance decision, dated September 16, 1976, from Lieutenant Colonel C. G. Nieman, an Accounting and Finance Officer. The request, which was forwarded to us on November 15, 1976, by the Per Diem, Travel and Transportation Allowance Committee, concerns the claims of Colonel Calvin Reese, USAF, for real estate expenses and temporary quarters subsistence expenses he had incurred in connection with a permanent change of station as a civilian employee.

The record shows that Colonel Calvin Reese had formerly been a General Schedule civilian employee of the Air Force serving in an Air Reserve Technician position at Ellington AFB, Texas. By letter of January 29, 1976, he was notified by the Civilian Personnel

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Officer that the function to which his position was assigned would be transferred to Bergstrom AFB, Texas, on March 31, 1976, and he was afforded 10 calendar days in which to accept or decline an offer to transfer with his position. He accepted the offer by completing and signing the appropriate questionnaire on January 30, 1976. Also, on January 30, 1976, he signed a Transportation Agreement (DD Form 1618) in which he agreed among other things to remain in Government service for at least 12 months beginning with the date of reporting to his new duty station, unless separated for reasons beyond his control and acceptable to the employing activity. He reported to his new duty station, Bergstrom AFB, on March 16, 1976. His dependents joined him there on April 30, 1976, after the sale of their former residence at Ellington AFB.

Prior to these events and in connection with his Air Force Reserve affiliation, the claimant had applied for an active duty position with the Air Force. In January 1976 he was informed that he was nominated for the position and, along with one other nominee, was interviewed on January 21, 1976, by the Commander, Air Force Reserve, who was to select one of the two for approval by the Secretary of the Air Force. He was informed at the interview that the sought-after active duty position would not be available until August 1976 due to budgetary limitations. However, during March 1976 an officer serving on active duty unexpectedly requested an early release. As a result the claimant received notice on March 25, 1976, that he was selected for the impending vacancy. He arranged for entry on active duty to be effective May 1, 1976.

Colonel Reese claims reimbursement for real estate expenses of \$3,300.50 (reduced to \$2,622.50 by the Claims Officer, Bergstrom AFB) incident to the sale of his former residence at Ellington AFB and temporary quarters subsistence expenses of \$410.12 incurred during the period from April 1 to April 30, 1976.

With regard to the claim for real estate expenses, doubt arises as to the effect, if any, of Colonel Reese's entry onto active duty with the Air Force prior to completing 12 months of service following his transfer to Bergstrom AFB. Incident to the transfer, Colonel Reese signed a Transportation Agreement which obligated him to remain in the Government service for at least 12 months after the date he reported for duty at his new duty station. The Finance Officer questions whether Colonel Reese's entry on active duty constitutes a breach of the Transportation Agreement so as to preclude payment of his real estate expenses by the Government.

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We think it does not for the reasons stated below. Authority for an agency to pay travel and transportation expenses and relocation allowances to an employee transferred within the continental United States is, under 5 U.S.C. § 5724(1) (1970), conditioned upon the employee agreeing in writing to remain in Government service for 12 months after the transfer, unless separated for reasons beyond his control which are acceptable to the agency concerned. Colonel Reese signed such an agreement and, while he entered on active duty with the Department of the Air Force, he is still in the Government service.

In 50 Comp. Gen. 374 (1970), we stated that we will follow the decision in Finn v. United States, 192 Ct. Cl. 814 (1970), in which it was held that a Government agency does not have the authority to require an employee to agree to remain in the service of that particular agency for 12 months following the effective date of the employee's transfer. The court held that 5 U.S.C. § 5724(1), requires only that the employee agree to remain in Government service. The court also held that an employee, transferred by the Federal Bureau of Investigation, had fulfilled his obligation although he had subsequently transferred to the Internal Revenue Service since he had completed 12 months of continuous Government service after his transfer.

In the present case, Colonel Reese has remained in Government service with the Department of the Air Force--he merely changed from a civilian to a military position. Since the Finn case held that an agency could not prohibit an employee from changing agencies as a condition precedent to reimbursing his relocation expenses, it follows that an employee who remains in the same executive department, as Colonel Reese did, has fulfilled the requirement set forth in 5 U.S.C. § 5724(1), so long as he remains in Government service for the required length of time.

With regard to Colonel Reese's claim for \$410.12 in temporary quarters subsistence expenses, we are asked whether the quarters occupied by the claimant from April 1 to April 30, 1976, may be considered temporary so as to be properly reimbursable.

The record submitted shows that the employee signed a lease for quarters in Austin, Texas, suitable only for himself for the period from March 15 to April 30, 1976, since his dependents did not plan to join him until their former residence was sold. The

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employee's intent was to rent an apartment suitable for the entire family in Westlake Hills, a suburb of Austin, Texas, upon the sale of their former residence. However, due to the fact that the sale of his residence could not be completed before May 1, 1976, Colonel Reese's family did not move to Austin. Colonel Reese states that he did not intend to purchase another home at that time because of the possibility of his entry on active duty in the near future.

The request for our decision indicates that the temporary nature of the employee's quarters is not questioned. However, as the claimant did not intend to seek permanent quarters for an extended period for personal reasons, the Finance Officer questions whether Colonel Reese may be reimbursed for temporary quarters subsistence expenses.

The term "temporary quarters" is not defined in either the applicable statute, 5 U.S.C. § 5724a (1970), or the implementing regulations, Federal Travel Regulations (FPMR 101-7) (May 1973), and our Office has held that the determination as to what constitutes temporary quarters must be based on the facts in each case. In determining whether the quarters occupied are temporary in nature, 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 dwelling, and the period of residence in the quarters by the employee. See Matter of C. Burton Winkle, B-185693, June 21, 1976, and cases cited therein.


We have consistently held that the determination as to the type of quarters, temporary or permanent, occupied by an employee at his new duty station, is based upon the intent of the employee at the time he moves into those quarters. See Matter of Ray L. Boman, B-173783.141, October 9, 1975, and cases cited therein.

In the present case, Colonel Reese signed a lease on an apartment suitable for himself only for the period from March 15 to April 30, 1976. Colonel Reese indicated that he intended to move to quarters which would be suitable for his entire family at the expiration of that lease. It is clear that Colonel Reese's intent at the time he moved into the apartment in Austin, Texas, was to occupy such quarters temporarily. The fact that he did not intend to purchase a house at the new duty station or secure lodging for an indefinite period does not negate the temporary nature of

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such quarters. Therefore, we are of the opinion that the claim for \$410.12 in temporary quarters subsistence expenses is properly reimbursable.

For the above-stated reasons, the vouchers on behalf of Colonel Calvin Reese for real estate and temporary quarters subsistence expenses may be paid if otherwise proper.


Deputy Comptroller General
of the United States