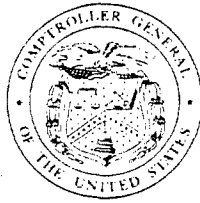


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DECISION



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

10,399

FILE: B-193885

DATE: June 8, 1979

MATTER OF: Irving R. Warnasch [Claim for Real Estate and Temporary Quarters Expenses]

- DIGEST:
1. Employee, who transferred from New York, New York, to Atlanta, Georgia, claims temporary quarters expenses at location near his new residence in Florida. Claim may be allowed since temporary quarters need not be located in vicinity of either old or new duty station. Also, employee necessarily occupied temporary quarters although he had purchased new residence because his family had to remain at old residence in connection with its sale, utilities were not connected in new residence, and employee had to buy beds and other furniture for new house.
 2. Employee, who transferred to Atlanta, Georgia, claims real estate expenses for purchase of residence which is not located near new duty station. Claim may not be allowed since employee does not commute to station daily and Atlanta is not in remote area. However, since employee states that he does not regularly report to his new duty station, his claim may be reconsidered if he submits evidence that his new duty station was designated primarily for per diem purposes. See Robert H. Van Winkle, B-184004, April 27, 1976.

This action is in response to the appeal by Mr. Irving R. Warnasch, an employee of the Small Business Administration (SBA), of the determination by our Claims Division denying his claim for real estate and temporary quarters subsistence expenses incident to a change of official duty station. The question presented for decision is whether Mr. Warnasch is entitled to reimbursement for real estate and temporary quarters expenses where his new residence and his temporary quarters were not located at his new duty station.

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Mr. Warnasch was transferred from New York, New York, to Atlanta, Georgia, and was authorized reimbursement for temporary quarters and real estate expenses. Mr. Warnasch states that since his new job required extensive travel and because of personal family reasons, he purchased a new residence in Casselberry, Florida, near Orlando, Florida. His family vacated their residence at their old duty station on August 15, 1975, and flew down to Florida the following day. Mr. Warnasch states further that his household goods arrived on August 16, 1975, and were moved into his new residence that night. However, he and his family remained in temporary quarters in a motel at Daytona Beach, Florida, until September 15, 1975, while they waited for utilities to be reconnected and while they purchased furniture and household items. In this connection Mr. Warnasch states that only part of his household goods were shipped to Florida because most of them including beds, were not suitable for the hot climate. He also states that his wife and children were required to stay in their old home pending its sale.

The Small Business Administration denied Mr. Warnasch's claim for temporary quarters on the grounds that his decision to remain in temporary quarters rather than occupying his new residence was for personal reasons and that once a new residence was obtained, there was no further justification for the payment of temporary quarters expenses. With regard to Mr. Warnasch's claim for real estate expenses incident to the purchase of a new residence, SBA denied his claim on the basis that his official duty station was Atlanta, Georgia, where he would regularly report for work, and that the expenses for the purchase of a residence away from the official duty station could not be paid under the applicable regulations. The Claims Division settlement sustained the agency's denial of Mr. Warnasch's claims for reimbursement.

On appeal, Mr. Warnasch argues that reimbursement for temporary quarters is not limited to lodgings occupied while the employee attempts to locate a new residence but instead covers any lodging temporarily occupied by the employee or his family after they have vacated their residence at the old duty station. With regard to his claim for real estate expenses, Mr. Warnasch argues that his work involves a substantial amount of travel, that he does not regularly report to work at Atlanta or any other office, and that he reports to work from his residence in Casselberry, Florida, as often he does from Atlanta.

Under the provisions of 5 U.S.C. § 5724a(a)(3), an employee may be reimbursed the subsistence expenses of himself and his immediate family for up to 30 days while occupying temporary quarters. The implementing regulations contained in the Federal Travel Regulations (FTR) (FPMR 101-7) provide that the period for temporary quarters should be reduced or avoided if the employee has had adequate opportunity to complete arrangements for permanent quarters (FTR para. 2-5.1) and that temporary quarters are to be regarded as an expedient to be used only if or for so long as necessary until the employee can move into permanent residence quarters (FTR para. 2-5.2d). The regulations also provide in para. 2-5.2c as follows:

"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."

Our decisions have held that the location of the temporary quarters need not be in the vicinity of either the old or new official duty stations so long as the quarters constitute temporary quarters under the applicable regulations. See James W. Nicks, B-191374, September 21, 1978, and decisions cited therein. In addition, the regulations do not require an agency to terminate an employee's entitlement to temporary quarters when permanent quarters are obtained, but rather when they are occupied or when the allowable time limit expires, whichever occurs first. See FTR para. 2-5.2f. Therefore, we find no basis to deny Mr. Warnasch's claim for temporary quarters on the grounds that the quarters were not located at either the old or new duty stations or that permanent residence quarters were obtained prior to the time the employee occupied those permanent quarters. However, for reimbursement of the expenses of occupying temporary quarters, a determination must be made that they were necessarily occupied. See FTR para. 2-5.2a. Ordinarily, such determination is made by the agency on an individual basis in light of surrounding circumstances. Douglas C. Staab, B-185514, September 2, 1976. However, our Office may make such determination on the basis of facts presented to us by a claimant and his agency. See Nicks, supra. In the instant case Mr. Warnasch's family was required to remain at the old station incident to its sale,

Citations:
as
F.T.R.
para. 2-5.1
F.T.R. para. 2-5.2d

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the utilities in the new home were not connected when it became available for occupancy, and the family did not have essential furniture, such as beds. Under such circumstances we believe Mr. Warnasch was justified in occupying temporary quarters. Therefore, his claim for temporary quarters subsistence expenses is allowable if otherwise proper.

With regard to Mr. Warnasch's claim for real estate expenses incident to the purchase of a new residence, we note that under 5 U.S.C. § 5724a(a)(4) an employee may be reimbursed the expenses of the purchase of a home at the new official station. For conditions under which this allowance is payable see FTR para. 2-6.1. The term "official station" is defined in FTR para. 2-1.4i as follows:

"The building or other place where the officer or employee regularly reports for duty. * * * With respect to entitlement under these regulations relating to the residence and the household goods and personal effects of an employee, official station or post of duty also means the residence or other quarters from which the employee regularly commutes to and from work. However, where the official station or post of duty is in a remote area where adequate family housing is not available within reasonable daily commuting distance, residence includes the dwelling where the family of the employee resides or will reside, but only if such residence reasonably relates to the official station as determined by an appropriate administrative official."

Our decisions have held that the new residence must be the dwelling from which the employee regularly commutes on a daily basis, not just on weekends. See Stanley H. Fretwell, B-186185, November 15, 1976; Clifton E. Klinefelter, B-185584, June 30, 1976; Robert A. Van Winkle, B-184004, April 27, 1976; and decisions cited therein. The evidence before us in the present case indicates that Mr. Warnasch did not commute daily from his residence in Casselberry to his official station in Atlanta. Moreover, Atlanta is not in a remote area where adequate family housing is not available.

However, Mr. Warnasch states that he does not regularly report for duty to Atlanta or any specific office on a steady basis and that

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he reports to work from Casselberry as frequently as from Atlanta. In Van Winkle, supra, we held that where an employee does not regularly report to duty at his designated official duty station but rather to various temporary duty stations and where his official station was so designated primarily to determine his per diem at his actual work sites, he may be reimbursed real estate expenses in connection with a transfer of station. On the record before us we cannot determine that Atlanta was designated Mr. Warnasch's official station primarily to determine his per diem at his actual work sites. Accordingly, we must sustain the disallowance of his claim for reimbursement of real estate expenses. However, Mr. Warnasch's claim will be reconsidered if he submits additional evidence that Atlanta was designated his official duty station only for per diem purposes.

Accordingly, the claims for temporary quarters subsistence expenses and for real estate expenses will be processed consistent with the above.


Deputy Comptroller General
of the United States