

Pool

155 ~~50~~

**DECISION**



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

FILE: B-198920

[Claim Form]

DATE: November 28, 1980

MATTER OF: James P. Driscoll - Temporary quarters  
subsistence expenses]

**DIGEST:** In order for his children to finish school term at old duty station, employee of Bureau of Indian Affairs arranged in advance to rent former residence after date of sale in connection with transfer from Palm Springs to Riverside, California. Claim for temporary quarters subsistence expenses for period of continued occupancy of former residence may not be certified for payment since record does not provide objective evidence of intent to vacate former residence so as to entitle employee to reimbursement under FTR para. 2-5.2C.

Josephine Montoya, (an authorized certifying officer for the Bureau of Indian Affairs, U.S. Department of the Interior, has requested an opinion of this Office on the claim of Mr. James P. Driscoll for temporary quarters expenses in connection with his official transfer) from Palm Springs to Riverside, California. In the circumstances presented, we cannot authorize the reimbursement to Mr. Driscoll of the temporary quarters expenses claimed.

Briefly, Mr. Driscoll's official transfer from Palm Springs to Riverside, California, was effective on March 12, 1979. (In connection with his transfer Mr. Driscoll sold his residence at the old official duty station on April 29, 1979, but made provisions in the contract of sale that he be allowed to rent-back his former residence. The record shows that Mr. Driscoll's supervisor advised him that such an arrangement would be acceptable to the agency so that Mr. Driscoll would not have to move his children to Riverside until after school was out on June 13, 1979. Further, as Mr. Driscoll has stated, although he purchased a permanent residence at Riverside on May 30, 1979,

~~013244~~ 113869

and his household goods were picked up from his former residence and delivered to Riverside on that date, he maintained his family in a hotel at Palm Springs until June 13, 1979, when school ended. On these facts Mr. Driscoll claimed expenses for April 30 through May 29, 1979, in the amount of \$1,973.78 for himself and his dependents who occupied their former residence on a rental basis during that period. The agency questioned Mr. Driscoll as to whether his family ever vacated the former residence within the meaning of para. 2-5.2c of the Federal Travel Regulations and reports the following exchange:

"When we told him that it appeared his family never vacated the residence, he told personnel in this office that he moved his furniture into storage overnight and moved it back into the residence the next morning to satisfy regulations that the former residence had been vacated. This office then requested documentation such as a bill of lading, to support moving and storing of household goods. He then told us that he rented a truck, loaded his furniture in the truck overnight and moved the furniture back into the house the next morning."

The agency denied Mr. Driscoll's claim for temporary quarters expenses for the period April 30, through May 29, 1979, finding that his family did not vacate the residence quarters within the meaning of para. 2-5.2c of the Federal Travel Regulations.

(The reimbursement to employees of the expense of occupying temporary quarters incident to a transfer of duty station is governed by the provisions of chapter 2, part 5 of the Federal Travel Regulations (FPMR 101-7) (May 1973). The question here is whether Mr. Driscoll and his family may be considered to have "vacated the residence quarters in which they were residing at the time the transfer was authorized" as required by para. 2-5.2c of the Federal Travel Regulations as a condition of entitlement to reimbursement for temporary quarters.)

There is no precise definition of the term "vacate" in the travel regulations and each case must be considered on its own merits. We generally consider a residence to be vacated when an employee and his family cease to occupy it for the purposes intended. In considering such cases, we have consistently given great weight to the intent of the employee with respect to the location of permanent residence and the occupancy of temporary quarters. In those cases where there is evidence of action taken by the employee prior to and/or after departure from the former residence which support an inference that the employee intended to cease occupancy of that residence, we generally have authorized reimbursement. Conversely, we have not approved reimbursement for temporary quarters where such evidence is absent. See Gerald L. Modjeska, 56 Comp. Gen. 481 (1977) and cases cited therein.

We are of the opinion that Mr. Driscoll's claim falls within the latter category of cases as the record here will not support a conclusion that Mr. Driscoll's family intended to vacate his former residence at the date of sale. This is not a case where an employee has been forced by circumstances beyond his control, such as the breakdown of a moving van (B-181032, August 19, 1974) or the unavailability of temporary quarters at either the old or new duty station (B-177965, March 27, 1973), to continue occupancy of his former residence. Here, as in the Modjeska case, we note that arrangements were made in advance for continued occupancy of the employee's former residence despite the availability of temporary quarters, although such quarters may have been less convenient. We view this evidence as supporting a conclusion contrary to that required to establish the entitlement to reimbursement.

Furthermore, in these circumstances the employee requesting reimbursement must bear the burden of providing convincing evidence of his claimed intent. Mr. Driscoll's contentions regarding his alleged moving activities, like statements of an employee's professed intent, are not sufficient by themselves to establish entitlement to a temporary quarters

B-198920

allowance and the record here does not provide the objective evidence necessary to support an inference of the requisite intent. Therefore, in these circumstances, we cannot conclude that Mr. Driscoll's family in fact vacated their former residence on April 30, 1979, and the payment of the temporary quarters allowance for the period claimed may not be authorized for them.

In addition, the supervisor's approval of Mr. Driscoll's continued occupancy plan is not determinative of the temporary quarters entitlement. Such advice, while unfortunate, does not bind the Government. We have consistently held that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations, and this is so even though the agent may have been unaware of the limitations on his authority. The Government is not estopped from repudiating advice given by one of its officials if that advice is erroneous. See Fredrick J. Killian, B-196476, May 9, 1980, and decisions cited therein.

Several additional observations are necessary to complete our evaluation of Mr. Driscoll's claim. The record does not clearly reflect whether Mr. Driscoll occupied temporary quarters at the new duty station during the 30-day period claimed. April 30 through May 29, 1979, or whether he commuted between his residence at the old duty station and the new duty station. In the event that Mr. Driscoll did commute during this period then, as we determined above, the failure to vacate the old residence precludes any entitlement to temporary quarters expenses for him as well as his family during that period.

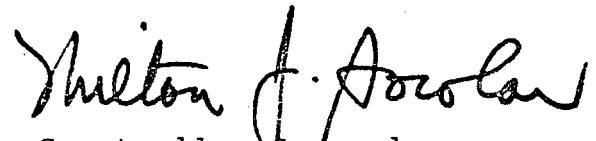
In the alternative, if Mr. Driscoll did in fact occupy temporary quarters at his new duty station during the period claimed then he would appear to be entitled to reimbursement for temporary quarters expenses for himself (provided he has not claimed or been reimbursed for any prior period) regardless of the fact that his family remained at the old duty station. In that event, however the length of time allowed for temporary quarters at Government expense

B-198920

would begin on April 30, 1979, for both the employee and the members of his family since 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 the time is begun for all and runs concurrently. Consequently the allowable 30-day period would terminate for both the employee and his family on May 29, 1979, and none of them would be entitled to reimbursement for expenses incurred after that date. Paragraph 2-5.2f, Federal Travel Regulations.

In addition to the foregoing the record indicates that the employee established a permanent residence at his new duty station on May 30, 1979. This also terminated the period of eligibility for temporary quarters subsistence expenses for both him and the members of his family. Paragraph 2-5.2f, Federal Travel Regulations; Lawrence J. Blus, B-192011, December 12, 1978.

Mr. Driscoll's claim should be re-evaluated in accordance with this decision.



For the Comptroller General  
of the United States