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DECISION



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

FILE: B-205112

DATE: February 9, 1982

MATTER OF: John W. Blanton, Jr. -
Temporary quarters

DIGEST: After 6 days in motel in area of new duty station employee rented apartment and remained there for 11 months until he moved into purchased home. Employee's claim for temporary quarters subsistence expenses for other than 6 days at motel is denied since record does not establish that employee's intent was to reside in apartment only temporarily. Indefinite intent to purchase home some time in future does not change character of prolonged occupancy of rented apartment from permanent to temporary.

Mr. John W. Blanton, Jr., appeals the Claims Group's denial of his claim for temporary quarters subsistence expenses (TQSE) and automobile shipping expenses incident to a permanent change of station from the Netherlands to Peninsula, Ohio. We affirm the action of the Claims Group. The TQSE are denied since the record fails to establish that the quarters were temporary in nature. The automobile expenses are denied since the privately owned vehicle was shipped on a foreign flag vessel.

In February of 1980, Mr. Blanton transferred from a position with the United States Army in the Netherlands to a position with the Department of the Interior, National Park Service, in Peninsula, Ohio. Mr. Blanton reported to his new duty station on February 24, 1980. From the day of reporting through February 29, 1980, he and his dependents stayed in a motel. On March 1, 1980, the claimant and his dependents moved into an apartment. They remained there until January 31, 1981, when they moved into a house the claimant purchased.

When the claimant sought reimbursement of his TQSE from February 24 to April 24, 1980, he was only allowed his expenses while at the motel from February 24 to February 29, 1980. The Department of the Interior, with the concurrence of our Claims Group, denied his claim for expenses for the period from March 1 to 24, 1980, on the basis that the record failed to establish that his residence in the apartment was temporary in nature. His claim

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for the period beyond March 24, 1980, was denied on the basis of paragraph 2-5.2a of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973) which limits payment of TQSE to a 30-day period upon transfer from a foreign country to the United States.

In claiming TQSE for the period subsequent to February 29, 1980, Mr. Blanton initially explained that his household goods did not arrive until 5 months after he reported for duty, and that he moved from the motel into an apartment to establish a residence for the purpose of enrolling his children in school. In support of this appeal, Mr. Blanton has supplemented the record with a statement in which he indicates that he rented the only quarters in the vicinity of his new office which "were available on a month to month basis." He reaffirms his earlier assertion that the apartment was rented to save the Government additional motel expenses.

The payment of subsistence expenses while occupying temporary quarters is authorized by 5 U.S.C. § 5724a(a)(3). The implementing regulations at FTR para. 2-5.2c define the term "temporary quarters" as "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." Paragraph 2-5.2f provides in pertinent part that the period of eligibility will terminate when the employee or any member of his immediate family occupies permanent residence quarters.

We have consistently held that a determination as to what constitutes temporary quarters is not susceptible of any precise definition, and any such determination must be based on the facts in each case. In disallowing Mr. Blanton's claim for additional TQSE, our Claims Group noted that an 11-month period of occupancy would not be considered temporary within the meaning of the above regulations, and that the information he had furnished did not otherwise establish an intent to occupy the apartment on a temporary basis. Its determination is consistent with decisions of this Office involving extended periods of occupancy in which we have held that the question of whether or not those quarters were initially (for the first 30 days) temporary is based on the intent of the employee at the time he moves into the lodgings. Charles L. Avery, B-179870, September 26,

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1974. In this regard, the Claims Group advised Mr. Blanton that neither his children's educational situation nor the fact that delivery of his household goods was delayed were sufficient to establish that the quarters were intended to be temporary in nature. See Ronald L. Stukey, B-194126, August 23, 1979.

We have considered the sworn statement now furnished by Mr. Blanton to establish that he intended to occupy the apartment on a temporary basis. We have recognized that an employee's rental of an apartment under a month-to-month lease is one factor that may tend to demonstrate an intent to occupy the apartment on a temporary basis. In Charles J. Wilson, B-187622, June 13, 1977, we found the employee's rental of an apartment on a month-to-month basis particularly significant in establishing that his residence was temporary, when coupled with the fact that he made a deposit on a new home 1 month after arrival and never unpacked many of his household goods.

Unlike the claimant in Wilson, Mr. Blanton has not furnished any evidence that he sought another place to live. We have consistently held that the fact that an employee purchased a new residence 11 months or 1 year after his arrival does not demonstrate that the apartment he rented in the meantime was a temporary residence. See Richard W. Coon, B-194880, January 9, 1980, and Myrosław J. Yuschishin, B-194073, June 18, 1979. As stated in C. Burton Winkle, B-185695, June 21, 1976, the employee's intention at some time in the future to purchase a house is too indefinite to support a conclusion that the quarters he occupied upon arrival at his new duty station were in fact temporary.

Because we find that Mr. Blanton has failed to demonstrate that he intended to occupy the apartment on a temporary basis, we must sustain our Claims Group's settlement denying his claim for additional TQSE.

Finally, as to the claimed shipping expenses for the privately owned vehicle, we cannot authorize payment since the record before us reveals the vehicle was shipped on a foreign flag vessel when a vessel of the United States registry was available. Payment for shipping by a foreign flag vessel may only be authorized when a United States

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flag vessel is not available or cannot provide the necessary service. See section 901 of the Merchant Marine Act of 1936, codified at 46 U.S.C. § 1241(a) (1976), interpreted in Joyce T. Jamison, B-194940, July 1, 1979; and District Containerize Express, B-188186, April 21, 1977.

for *Milton J. Fowler*
Comptroller General
of the United States



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

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February 9, 1982

The Honorable John F. Seiberling
House of Representatives

Dear Mr. Seiberling:

This is in response to your letter of September 15, 1981, in which you asked us to review the Claims Group's denial of the claim of Mr. John W. Blanton, Jr., for temporary quarters subsistence expenses in light of the additional information he has furnished.

We are enclosing a copy of our decision of today, B-205112, affirming the denial of the claim. As the decision explains in detail, temporary quarters subsistence expenses were not allowed because the case record failed to establish that the apartment rented by Mr. Blanton was intended to be his temporary residence.

We regret that a decision more favorable to your constituent was not possible.

Sincerely yours,

for Milton J. Borolan
Comptroller General
of the United States

Enclosure