

DECISION

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

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FILE: B-213827**DATE:** April 2, 1984**MATTER OF:** Ronald A. Kreizenbeck - Temporary Quarters
Subsistence Expenses**DIGEST:**

An employee was transferred from Seattle, Washington, to Juneau, Alaska, and after a brief occupancy of a hotel room, he rented and moved into a house on which he had placed an earnest money deposit. The employee may not be reimbursed for temporary quarters subsistence expenses even though he alleges he was forced to rent the house, which was unfinished, because no other lodgings were available, and even though the rental of the house was less costly than rental of a hotel room. The record does not reveal the employee intended to occupy the house on other than a permanent basis and, therefore, the house does not qualify as temporary quarters.

ISSUE

The issue in this decision concerns an employee's entitlement to temporary quarters subsistence expenses where he rented a house which he subsequently purchased. Although the employee asserts that he was forced to rent the unfinished house because no other lodgings were available, and although rental of the house was less costly than rental of a hotel room for that period, we hold that he is not entitled to reimbursement. The record does not reveal that the employee intended to occupy the house on other than a permanent basis and, therefore, the house does not qualify as temporary quarters.

BACKGROUND

This is in response to a request from an authorized certifying officer in Region 10 of the Environmental Protection Agency (EPA), for our decision concerning the entitlement of Mr. Ronald A. Kreizenbeck to temporary quarters subsistence expenses.

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Mr. Kreizenbeck was transferred from a position with the EPA in Seattle, Washington, to a position in Juneau, Alaska. He reported to his new duty station on February 22, 1982, and began occupying a hotel room on that date. He stayed there until March 1, 1982, when he moved into an unfinished house he rented from the builder. Mr. Kreizenbeck had placed an earnest money deposit on this house on February 7, 1982. He eventually purchased the house, and closing took place on June 23, 1982. His family joined him in July 1982, when the house was completed.

Mr. Kreizenbeck apparently recognizes that in previous Comptroller General decisions we have not allowed temporary lodgings expenses for rental of a house which is subsequently purchased. However, he asserts that he should receive reimbursement because he was forced to rent the house due to the unavailability of temporary quarters facilities after March 1, 1982, when the state legislature convened. The legislature continued in session during the period Mr. Kreizenbeck was renting his house, and a part of the Anchorage EPA office was transferred to Juneau, putting additional pressure on a tight housing market. To support his claim that temporary lodgings were not available, Mr. Kreizenbeck has submitted copies of the classified ads for rentals from the Juneau Empire, which do reveal a paucity of rental units. In addition, to support his claim for reimbursement, Mr. Kreizenbeck points out that the house was unfinished and its rental cost was less than the cost of a hotel room for the same period.

OPINION

Section 5724(a)(3), of title 5, United States Code (1976), is the statutory authority for reimbursement of temporary quarters subsistence expenses. Paragraph 2-5.2c of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), implementing the statute, defines temporary quarters as:

"* * * any lodging obtained from private or commercial sources to be occupied temporarily by the employee or members of his/her immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized."

employee has no absolute right to the maximum allowable period of temporary quarters subsistence expenses. Paragraph 2-5.2d of the FTR provides that temporary quarters should be regarded as an expedient to be used "only if or so long as necessary" until the employee can move into permanent quarters, and FTR paragraph 2-5.2f provides that the period of eligibility for temporary quarters subsistence terminates when the employee or any member of his immediate family occupies permanent residence quarters.

We have consistently held that the determination of the type of residence occupied, that is, temporary or permanent, is based on the intent of the employee at the time he or a member of his family moves into the quarters which later became his permanent residence. Ronald C. Thomas, B-207507, May 17, 1983. Thus, where a transferred employee pays rent for a home he clearly intends to purchase, we have held that the home is not "temporary quarters" as defined in FTR paragraph 2-5.2c and the employee is not entitled to reimbursement for temporary quarters subsistence expenses. Stephen A. Webb, B-211004, May 23, 1983. There is no indication that Mr. Kreizenbeck did not intend to stay in the house once he had moved in. As we previously mentioned, he had placed an earnest money deposit on the house in February, and there is no evidence that he made an active search for other temporary quarters after he actually occupied the house.

As we stated in Webb, it is the occupancy of the quarters, not their unrestricted or comfortable use which is controlling. Thus, we have denied reimbursement regardless of the fact that the residence still may be under construction and unsuitable for occupancy. See B-174831, April 13, 1972; and B-174971, February 28, 1972. Similarly, we have held that savings to the Government do not transform permanent occupancy of a house into a temporary occupancy. See William C. Palzkill, B-205866, May 18, 1982. Thus, the fact that Mr. Kreizenbeck's house was unfinished and that the cost of renting it was less than the cost of renting a hotel room has no bearing on his entitlement to temporary quarters subsistence expenses since it appears that he intended to occupy the house on a permanent basis at the time he moved in.

Similarly, the fact that temporary lodgings facilities in Juneau were scarce does not affect Mr. Kreizenbeck's entitlement. In Robert N. Havens, B-194837, August 8, 1979, we denied temporary quarters subsistence expenses to an employee, even though he alleged that temporary quarters were unavailable within a 25-mile radius, upon our finding that he intended to permanently occupy the quarters to which he had moved.

We note that FTR para. 2-5.2c which defines what constitutes temporary quarters was amended by Supplement 4 of the FTR, effective October 1, 1982, to permit payment of temporary quarters subsistence expenses when temporary quarters occupied ultimately become the employee's permanent quarters if, in the employing agency's judgment, the employee shows satisfactorily that the initial intent was to occupy the quarters temporarily. However, this amendment is effective only for transfers on or after October 1, 1982 (after Mr. Kreizenbeck's transfer).

Accordingly, Mr. Kreizenbeck may not be paid for temporary quarters subsistence expenses for the period after March 1, 1982.

Milton J. Fowler
for
Comptroller General
of the United States