

DECISION



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

FILE: B-218886

DATE: March 24, 1986

MATTER OF: Quinea D. Minton

DIGEST:

1. Transferred federal employees are normally ineligible for reimbursement of temporary quarters subsistence expenses incurred while renting their permanent residence following its sale at their old duty station, but they may qualify for reimbursement if they establish that an intent to vacate the home existed prior to rental. Hence, a transferred employee who provided information showing that he planned to move on the day before the sale of his home, but was delayed by the government's inability to locate a mover, established sufficient intent to vacate to qualify for reimbursement of subsistence expenses incurred during the temporary rental of his old residence after its sale.
2. The relocation entitlements of transferred federal employees are governed by the regulations in effect at the time the relocation transactions occur. An authorization specifying 30 days' temporary quarters subsistence expenses for a transferred employee may therefore be extended up to 60 days due to the issuance of new regulations effective prior to the employee's transfer date.

A U.S. Department of Agriculture employee claims temporary quarters subsistence expenses for the period in which he and his spouse rented and occupied their permanent residence at their old duty station after it had been sold.^{1/} Because the employee intended to vacate the

^{1/} Mr. W. D. Moorman, Authorized Certifying Officer, Office of Finance and Management, National Finance Center, U.S. Department of Agriculture, submitted this request for a decision.

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residence, as evidenced by plans that were made for the government to arrange for the shipment of his household goods prior to the sale of the house, temporary quarters subsistence expenses may be authorized for the period during which he rented the home. Although the travel authorization provided for reimbursement of temporary quarters subsistence expenses for 30 days, the Department of Agriculture may reimburse the employee for expenses incurred during the 38 days claimed due to statutory and regulatory changes in effect when he transferred.

Statement of Facts

On January 25, 1984, the U.S. Department of Agriculture issued Mr. Quinea D. Minton an authorization for a permanent change-of-station move from Nashville, Arkansas, to Little Rock, Arkansas, including up to 30 days' temporary quarters subsistence expenses. Mr. Minton contracted to sell his home in Nashville with a purchaser who insisted on closing the sale on April 24, 1984. On April 9, Mr. Minton formally requested that a government bill of lading be issued, and that arrangements be made to move his household goods on April 23. Later that month, Mr. Minton was informed that the government was unable to contract with a mover to ship his goods because nation-wide movers refused to haul property the relatively short distance between Nashville and Little Rock. Mr. Minton was advised to contract with a local mover for the transfer, and a government bill of lading was issued on April 23 with "May, or as agreed" listed as pick-up date.

Closing on the employee's house took place, as planned, on April 24. Mr. Minton arranged for a mover to transport his household goods on May 18, and to rent the home he had sold until the moving date. On May 4, he closed on the purchase of a home in Little Rock, and he moved into the home on June 1. Between May 18 and May 31, Mr. Minton and his spouse lived in temporary lodgings in Little Rock, while they awaited the completion of construction of their new residence.

Mr. Minton claimed temporary quarters subsistence expenses for the period from April 24 to May 31. The U.S. Department of Agriculture initially disallowed the expenses incurred between April 24 and May 18--the period during

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which Mr. Minton rented his former residence in Nashville-- citing our decision, Michael J. Johnson, B-215708, October 11, 1984, and federal regulations defining "temporary quarters" as lodgings inhabited by the employee after he vacates his former residence at the old duty station. Federal Travel Regulations, para. 2-5.2, incorp. by ref., 41 C.F.R. § 101-7.003.

A certifying officer at the Department of Agriculture's National Finance Center now asks whether Mr. Minton's expenses incurred at his old duty station should be reimbursed based on the concept that he constructively vacated the former residence by intending to vacate it before renting it.

Constructively Vacating the Premises

Federal statutory law provides that when an employee is transferred, the U.S. government may pay "subsistence expenses of the employee and his immediate family for a period of 60 days while occupying temporary quarters when the new official station is located within the United States * * *." 5 U.S.C. § 5724a(a)(3), as amended by Public Law 98-151, § 118(a)(5), November 14, 1983, 97 Stat. 977. Federal regulations implementing the above statute read:

"Generally, the term temporary quarters refers to lodging obtained from private or commercial sources for the purpose of temporary occupancy after vacating the residence occupied when the transfer was authorized."
FTR, para. 2-5.2

We have expressed the view that, while no precise definition of "vacate" is provided in the regulations, generally, a residence is deemed vacated when an employee and his family cease to occupy it for the purposes intended. Great weight is given to the intent of the employee with respect to the location of the permanent residence and the occupancy of temporary quarters. Although employees are ordinarily ineligible for reimbursement of subsistence expenses incurred while renting their permanent residence following its sale at their old duty station, in cases where there is evidence of action taken by the employee prior to or after departure from the former

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residence which supports the conclusion that the employee intended to cease occupancy of that residence, we generally have authorized reimbursement. See Michael J. Johnson, B-215708, supra; and Gerald L. Modjeska, 56 Comp. Gen. 481 (1977).

Thus, we have held that an employee who rented his home at his old duty station after its sale because the moving van which was scheduled to transport his household goods broke down on moving day, evidenced intent to vacate his home during the subsequent rental period. Beverly L. Driver, B-181032, August 19, 1974. We have also found that an employee who returned to his old residence after failing to purchase a new home, intended to vacate the residence because he had previously signed a contract to buy a new house, temporarily relocated his family to the new duty station in anticipation of moving into the new house, and planned to return alone to the old residence for the one day only to supervise the removal of furnishings. Patrick T. Schluck, B-202243, August 14, 1981. Conversely, we have found intent to vacate lacking when an employee rented his home after sale in order to delay relocation of his children until the end of the school year. James P. Driscoll, B-198920, November 28, 1980. Also, in the decision relied upon by the Department of Agriculture in making its initial determination, Michael J. Johnson, B-215708, supra, the employee produced no evidence of intent to vacate the residence prior to renting it, but argued that his sale and subsequent rental of the home, alone, indicated that he had "legally vacated" the premises. We held in that case that the record did "not support a conclusion that [the claimant's] family intended to vacate the former residence at the date of sale."

In the present case, evidence of Mr. Minton's intent to cease occupancy of the Nashville home consists of his designation on government documents of his moving date as April 23--the day before the sale of his house. In fact, he was unable to move to Little Rock until May 18, the earliest date he could arrange for local movers to ship his household goods after the federal government indicated its inability to contract with a mover for him. We find that this evidence establishes that the employee intended to cease occupancy of the Nashville residence on April 23, and that he constructively vacated the premises at that time.

Therefore, we conclude that reimbursement of Mr. Minton's temporary quarters subsistence expenses from April 24-May 18 are authorized by the Federal Travel Regulations.

Entitlement to Increased Relocation Benefits

We note that Mr. Minton's authorization for a permanent change-of-station move permitted reimbursement of temporary quarters subsistence expenses for 30 days, while he claimed reimbursement for expenses incurred during a 38-day period. At the time the authorization was issued, January 1984, the Federal Travel Regulations provided that up to 30 days' temporary quarters subsistence expenses could be reimbursed to transferred employees. FTR, para. 2-5.2(a) (Supp. 1, Sept. 28, 1981). On March 13, 1984, new regulations were issued extending the reimbursable period to 60 days, and made applicable to employees transferring after November 13, 1983. FTR, para. 2-5.2(a) (Supp. 10, March 13, 1984). The regulation also granted agencies authority to determine appropriate reimbursable temporary quarters periods for each transferred employee. FTR, para. 2-5.1.

While employees are normally bound by the orders contained in their relocation authorizations, in the present case, a change in relevant travel regulations permits the Department of Agriculture to reimburse Mr. Minton for up to 60 days' temporary quarters subsistence expenses. There is no indication that consideration was ever given to granting Mr. Minton more than 30 days' temporary quarters subsistence expenses based on the regulatory revision issued in March of 1984. We would, therefore, have no objection if the Department of Agriculture now reviewed the matter, and authorized Mr. Minton 38 rather than 30 days' expenses, particularly since it appears that the delay in his move was attributable to the government's actions.

Milton J. Jordan
for Comptroller General
of the United States