

Maguire
JRM-II

DECISION



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

FILE: B-221751

DATE: July 11, 1986

MATTER OF: Michael F. Locke

DIGEST:

1. Agency properly exercised its discretion in denying request to extend temporary quarters subsistence expense eligibility for an additional 60-day period where the employee's need for further occupancy of temporary quarters was due to his inability to sell his former residence in a depressed housing market. Agency regulations provide that a poor housing market and inability to sell a former residence generally are not considered compelling reasons which justify granting an extension. Moreover, the Federal Travel Regulations provide that an extension may be granted only when the need for additional time in temporary quarters is due to circumstances which have occurred during the initial 60-day period of temporary quarters occupancy.
2. Members of an employee's immediate family joined him at his new duty station for varying periods after which they returned to and remained for a substantial period in the family's residence at the old duty station. Because they had not vacated their residence at the old duty station and because their travel was for visitation rather than to relocate to the new duty station, the employee is not entitled to reimbursement for their travel expenses or to temporary quarters subsistence expenses for their stay at the new duty station.

This action is in response to a request for a decision concerning the temporary quarters subsistence expense

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entitlement of Michael F. Locke.^{1/} The Department of Agriculture asks whether Mr. Locke should have been reimbursed for temporary quarters subsistence expenses for his dependents during periods they joined him in temporary quarters at his new duty station and whether the agency erred in denying Mr. Locke's request to extend his eligibility for reimbursement of temporary quarters subsistence expenses for an additional 60-day period. It is our view that Mr. Locke should not have been reimbursed for temporary quarters subsistence or travel expenses for his wife and children since their travel to and stay at the new duty station took place prior to the date on which they vacated their residence at the old duty station. We find, in addition, that the agency acted within its discretion in denying temporary quarters subsistence expense reimbursement for an additional 60-day period.

Background

Michael F. Locke, an employee of the Office of the Inspector General, U.S. Department of Agriculture, was transferred to Hyattsville, Maryland, in January 1985. He was authorized travel and transportation expenses for himself and his dependents as well as a temporary quarters subsistence expenses allowance. Mr. and Mrs. Locke arrived in College Park, Maryland, on January 22, 1985. Their children, who continued to reside in the family's Florida residence, traveled to the new duty station on February 16, 1985, and returned to the Florida residence on February 26, 1985. On March 16, 1985, Mrs. Locke returned to the family's residence in Florida and remained there until August 1985, when all of Mr. Locke's dependents relocated to Maryland. Throughout this period and until October 2, 1985, when the family moved into its new home in Maryland, Mr. Locke remained in temporary quarters at his new duty station. Mr. Locke has been reimbursed for his wife's travel to Maryland in January and for his children's travel

^{1/} The request was made by W. D. Moorman, Authorized Certifying Officer, National Finance Center, Office of Finance and Management, U.S. Department of Agriculture, New Orleans, Louisiana.

to Maryland in February, as well as temporary quarters subsistence expenses for the period each stayed with him following that travel. He has also been reimbursed temporary quarters subsistence expenses for the 60-day period that he occupied temporary quarters.

On March 11, Mr. Locke submitted a memorandum to his agency explaining that he had been unable to sell his Florida residence and requesting that his temporary quarters subsistence eligibility be extended for an additional 60-day period. The agency denied his request based on its regulations which specify that an employee's inability to sell his former residence does not justify granting an extension of the period for which a temporary quarters subsistence expenses allowance may be paid. A certifying officer of the Department of Agriculture has presented several questions regarding whether Mr. Locke should have been paid for temporary quarters subsistence or travel expenses for his dependents under these circumstances and whether his request for an additional 60 days temporary quarters subsistence expenses allowance was properly denied by the agency. Reimbursements Mr. Locke has received in connection with his own occupancy of temporary quarters are not in issue.

Temporary Quarters Allowance

Sections 5724 and 5724a of title 5, United States Code, authorize reimbursement of certain relocation expenses incurred by employees who have been transferred in the interest of the government. Those expenses include an allowance for temporary quarters subsistence expenses incurred by the transferred employee and members of his immediate family. 5 U.S.C. § 5724a(a)(3). That allowance is payable in accordance with implementing regulations set forth in the Federal Travel Regulations (FTR), Chapter 2, Part 5 (Supp. 10, March 13, 1983), incorp. by ref., 41 C.F.R. § 101-7.003.

Vacating the Old Residence

Under 5 U.S.C. § 5724a(a)(3) an agency may pay "subsistence expenses of the employee and 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) (Supp. 1, 1983). As described in the implementing regulations the term "temporary quarters" refers to lodging obtained for the purpose of

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temporary occupancy after vacating the residence occupied when the transfer was authorized. FTR, para. 2-5.2(c) (Supp. 10, March 13, 1983).

There is no definition of the word "vacate" in the travel regulations. However, we generally consider a residence to have been vacated by an employee or a member of his immediate family when the employee or the particular family member whose entitlement is in question ceases to occupy it for the purposes intended. In determining whether the family member has ceased to occupy a residence at his former duty station, we examine the action taken by an employee and his family before and after the departure from that residence. The focus of our inquiry generally has been whether, in light of all the facts and circumstances, there is objective evidence of intent to vacate the former residence. Mere statements of an employee's professed intent are not sufficient by themselves to establish entitlement to a temporary quarters allowance. Luther S. Clemmer, B-199347, February 18, 1981.

In John M. Mankat, B-195866, April 2, 1980, we denied reimbursement for temporary quarters for an employee's family since they returned to the old duty station after 1 week at the new duty station in order to prevent vandalism at the former residence. In that case, the residence at the old duty station was left fully furnished and the family was unsure of when it would be sold or when they could move into a new residence at the new duty station. In John O. Randall, B-206169, June 16, 1982, an employee's family joined him at the new duty station several months after he transferred, remained approximately 1 month and returned to their fully furnished residence at the former duty station. In George L. Daves, B-215408, February 26, 1986, 65 Comp. Gen. _____ (1986), the employee's family joined him at the new duty station several months after he reported for duty, remained for 26 days, and then returned to their residence at the old duty station. In these cases we found a lack of intent on the part of family members to vacate the former residence. Since the dependents had not vacated the former residence, we held that temporary quarters subsistence expenses were not payable during their visits to the new duty station.

In the present case, Mr. Locke and his wife traveled to the new duty station while their children remained in their fully furnished residence at the old duty station. A month later, the children traveled to the new duty station for a

10-day visit and returned to the residence at the old duty station. Shortly thereafter, the employee's wife returned to the residence at the old duty station. Mrs. Locke and the children remained in the Florida residence until August 21, 1985, when she moved permanently to Maryland. The employee returned to Florida on August 23 to oversee shipment of the household goods and returned to Maryland on August 29, 1985, with the children. The entire family remained in temporary quarters until October 2, 1985. It is our view that the record does not provide the objective evidence necessary to support an inference of intent on the part of Mrs. Locke or the children to vacate the old residence prior to August 1985. Therefore, Mr. Locke should not have been reimbursed for temporary quarters subsistence expenses incurred by Mrs. Locke and the children between January and March 1985. In addition, because they were incurred for the purpose of visitation rather than to accomplish the permanent change of station, the travel expenses incurred by Mr. Locke's dependents in January and February 1985 may not be reimbursed. See George L. Daves, B-215408, supra.

Additional Temporary Quarters Allowances

Under FTR, para. 2-5.2a (1), a transferred employee may be authorized temporary quarters expenses for a period of up to 60 days. Subparagraph 2-5.2a (2) provides that the agency may authorize payment of temporary quarters subsistence expenses for an additional period of up to 60 days if the head of the agency determines that there are compelling reasons for the continued occupancy of temporary quarters and when there is a demonstrated need for the continued occupancy of temporary quarters due to circumstances beyond the employee's control which have occurred during the initial 60-day period. Examples of compelling reasons provided in the FTR include delay of delivery of household goods due to strikes, weather and acts of God, inability to occupy a new residence due to unanticipated problems such as delays in settlement of new residence or sudden illness or death of the employee or his family.

For employees of the Department of Agriculture the FTR is further implemented by Agriculture Travel Regulation DM 2300-1. As amended December 14, 1984, paragraph 2-5.2a(2) of that regulation provides that "generally * * * inability, for whatever reason, to sell a residence,

does not by itself justify this extension." It provides in addition that a "poor housing market" is not considered a compelling reason which will support the granting of an extension.

The determination to extend the period for occupancy of temporary quarters is a matter committed by statute to the discretion of the agency concerned. Specifically, 5 U.S.C. § 5724a(a)(3) provides:

"* * * The period of residence in temporary quarters may be extended for an additional 60 days if the head of the agency concerned or his designee determines that there are compelling reasons for the occupancy of temporary quarters.* * *"

That discretion is required to be exercised in accordance with the Federal Travel Regulations which impose requirements that the need for additional time in temporary quarters be due to circumstances beyond the employee's control which are acceptable to the agency and which have occurred during the initial 60-day period in temporary quarters. As a practical matter, this limits an agency's authority to grant an extension where circumstances existing at the time of transfer, such as a poor housing market or high interest rates, affect the employee's ability to sell his residence at the old duty station.

The fact that an employee has not sold his former residence within the initial 60-day period may not, in itself, be considered the circumstance which gives rise to the need for an additional period of temporary quarters occupancy. That fact may be attributable to a variety of circumstances, some within the employee's control, such as an inflated listing price, and some existing prior to the employee's transfer, such as high interest rates. However, there are particular circumstances which may arise during the initial period of temporary quarters occupancy which may affect the employee's ability to sell his former residence and which would, in our opinion, justify the granting of an extension. These circumstances may include anything from natural disasters affecting the physical condition of the property to legal action affecting the marketability of title to the property.

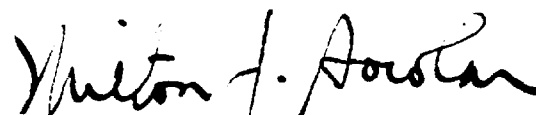
There is an ambiguity in the Department of Agriculture's regulations which states that an employee's inability to sell his residence "for whatever reason" cannot justify the granting of an extension, but prefaces that seemingly flat prohibition with the word "generally." For this reason we do not view the Agriculture Department's regulation as prohibiting the granting of an extension in every case where the need to occupy temporary quarters for longer than 60 days is due to the employee's inability to sell his former residence. The Department of Agriculture has discretion to consider the reasons for the employee's inability to sell the residence and to grant an extension where the inability is due to circumstances beyond his control which have occurred during the initial 60-day period.

In Mr. Locke's case, his request for an extension was supported by his explanation that he had been unable to sell his former residence due to a depressed real estate market. Since he has not provided any information which would indicate that his inability to sell his former residence was due to circumstances other than a poor housing market which arose during the first 60 days he occupied temporary quarters, we find that the agency acted in accordance with applicable regulations in denying his request for an extension.

Conclusion

In accordance with the discussion above, we find that the Department of Agriculture acted properly in denying Mr. Locke's request to extend his eligibility for temporary quarters subsistence expenses. We find, in addition, that he has been improperly reimbursed temporary quarters subsistence and travel expenses for periods that his wife and children visited him at his new duty station prior to the time they vacated their residence at the old duty station.

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Comptroller General
of the United States