

7/10/87



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Charles P. Ball - Relocation Expenses

File: B-223407

Date: June 18, 1987

DIGEST

1. Employee leased a house for the period of his temporary duty. At the end of his temporary duty he was converted to permanent duty but his lease required him to vacate the house. He may be paid temporary quarters subsistence expenses during the period he vacated the house and occupied an apartment where he reoccupied the house as soon as it became available since the record supports a determination that he intended to occupy the apartment only temporarily.

2. Employee may be reimbursed real estate expenses incident to the sale of his residence at his old duty station even though he did not occupy the residence at the time of his permanent transfer since he would have been residing in the residence but for the action of the Government in assigning him to long-term temporary duty at the new duty station.

DECISION

An employee's claim for temporary quarters subsistence expenses for the period he occupied a furnished apartment after he had vacated a house he had leased for the period of his temporary duty assignment may be paid where subsequent to his conversion from temporary to permanent duty, he reoccupied the house as soon as it was again available. The same employee may be reimbursed real estate expenses for the sale of his residence at his old duty station even though he had not occupied it since he would have occupied it but for his temporary duty assignment. 1/

BACKGROUND

In July 1984, Mr. Charles P. Ball, an employee of the National Security Agency, was transferred from Weisbaden, Germany, to Fort George G. Meade, Maryland, with shipment of his household goods authorized to an alternate destination at

1/ Mr. Kenneth F. Chute, Finance and Accounting Officer, National Security Agency, Central Security Service, Fort George G. Meade, Maryland, has requested an advance decision on the claims submitted by Mr. Charles P. Ball.

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Newport, Rhode Island. He subsequently was authorized 320 days of long-term training at the Naval War College, Newport, Rhode Island, for the period August 8, 1984-June 21, 1985. He has been reimbursed for approximately 318 days of per diem and travel expenses for himself. His dependents resided with him during the entire period of temporary duty at his personal expense.

The temporary duty was converted to permanent change of station from Fort Meade to Newport effective June 24, 1985, with the travel order stating that movement of the employee, dependents, and/or household goods to the new duty station was contingent upon their actual location at the time of transfer.

The employee submitted a claim for reimbursement of temporary quarters subsistence expenses for the period June 24, 1985, through September 2, 1985. The supporting documentation provided by Mr. Ball states that he signed a 10-month lease for a house in Newport for the period September 3, 1984, through the month of June, his temporary duty period. Upon his conversion from temporary duty to permanent change-of-station status, and in conjunction with the termination of his lease, he vacated the residence on June 24, 1985, in order to allow the owners to occupy the house for the summer. His household goods were stored in a garage adjacent to the residence while he and his family occupied a furnished apartment in Newport during the June 24-September 2 period. He reoccupied the same residence on September 2, 1985, but he did not negotiate a new lease. The agency requests a decision relative to the reimbursement of temporary quarters subsistence expense for the period Mr. Ball occupied the furnished apartment.

Mr. Ball also submitted a claim for reimbursement of real estate expenses in connection with the sale of his former residence in Severna Park, Maryland, on May 1, 1986. Severna Park is within commuting distance of Mr. Ball's permanent duty station at Fort Meade, Maryland. However, since neither Mr. Ball nor his family had occupied the residence subsequent to his transfer to Germany in 1981, a decision relative to this claim is also requested.

TEMPORARY QUARTERS SUBSISTENCE EXPENSES

Paragraph 2-5.2c, of the Federal Travel Regulations (FTR), FPMR A-40, Supp. 10, effective November 14, 1983, 49 Fed. Reg. 13920, 13923 (April 9, 1984), states that 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. Paragraph C13000 (Change 240, October 1, 1985) of 2 Joint Travel Regulations (2 JTR) uses identical language to define "temporary quarters."

We have consistently held that what constitutes temporary quarters is not susceptible of any precise definition and, therefore, that determination must be based on the facts in each case. Harrison J. Lane, B-183829, January 2, 1976; Robert L. Donelson, B-183239, June 25, 1975. In determining whether the intent of the employee was to occupy the quarters on a permanent or temporary basis, we have considered such factors as the type of quarters, the duration of the lease, movement of household effects into the quarters, efforts to secure a permanent residence, expressions of intent, and any other pertinent facts and circumstances surrounding the occupancy. If on the basis of these considerations it is objectively determined that at the time the employee moved into the residence, he clearly manifested the intent to occupy the quarters only on a temporary basis, we have allowed payment of temporary quarters subsistence expenses, even though the quarters could be occupied permanently, or did, in fact, become permanent. See Harrison J. Lane, supra, and cases cited therein.

In this case, Mr. Ball occupied the furnished apartment after vacating the residence occupied when his permanent change-of-station status was effective. At that time, he knew that he intended to occupy these quarters only on a temporary basis. When he stored his household goods at the house he had formerly leased in Newport, he did so in order that he might reoccupy the house on a permanent basis as soon as it became available. Even though it would have been possible for him to retain the furnished apartment permanently, it would have been impractical to do so. The fact that Mr. Ball obtained the furnished apartment only for the period he vacated the house he had leased while on temporary duty status and that he returned there was sufficient evidence to conclude that he had occupied temporary quarters until suitable permanent quarters were available. Accordingly, the claim for temporary quarters subsistence expenses may be paid if otherwise proper.

REAL ESTATE EXPENSES

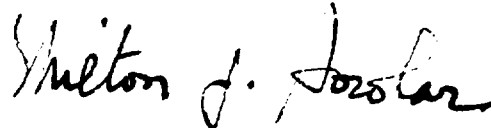
Regarding payment of the real estate expenses in connection with the permanent change of station from Fort George G. Meade, Maryland, to Newport, Rhode Island, the submission

questions whether the dwelling at the old duty station met the requirement of paragraph C14000, 2 Joint Travel Regulations (2 JTR) that it was the employee's actual residence at the time he was first definitely informed by appropriate authority that he was to be transferred to a new duty station.

These JTR provisions are based upon FTR paragraphs 2-1.4i and 2-6.1d, FPMR A-40, Supp. 1, effective November 1, 1981, which when read in combination, generally establish the requirement that in order for an employee to be reimbursed the expenses of the sale of the residence at his old station, he must live there at the time he was notified of his transfer and that it is the place where he regularly commutes to and from work.

Notwithstanding that general requirement, since an employee away from his duty station on Government business does not effect a change of station during the pendency of such assignment (52 Comp. Gen. 834 (1973)), we have recognized exceptions to the "actual residence" rule when a permanent change of station occurs while an employee is on extended temporary duty (Frank M. Lindeen, B-188657, December 30, 1977); is constantly in a travel status with no single, true official duty station (Bill L. Kenney, B-188706, December 14, 1978); or is performing a long-term training assignment contemplating a return to his then permanent duty station upon completion of training (B-164043, May 28, 1968). The principle embodied in those decisions is applicable here. That is, where the employee and his family are not residing in their residence at the old duty station because of Government training or travel requirements at the time they are notified of a permanent transfer such residence nonoccupancy does not preclude reimbursement of the expenses of selling their residence at the old permanent station upon that subsequent move, so long as all other conditions of entitlement are met. John E. Wright, 64 Comp. Gen. 268, 272 (1985).

Accordingly, payment may be made for temporary quarters subsistence expenses and reimbursement of real estate expenses in accordance with this decision.

for 
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of the United States