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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jerrold Cooley - Temporary Quarters Subsistence Expenses - Residence Owned by Employee

File: B-233161

Date: July 14, 1989

DIGEST

A transferred employee and his immediate family moved into a house which he owned at the new duty station. He had rented it out for 3 years prior to transfer, and has currently listed it for sale. The employee claims entitlement to 60 days subsistence expenses for temporary occupancy of the residence, asserting that it is unsuitable for children and that he intends to move to permanent quarters closer to his worksite as soon as it is sold. His claim may not be allowed. The asserted unsuitability for children and the plan to move as soon as it is sold are too vague and indefinite to establish that the house qualifies as temporary quarters.

DECISION

This decision is in response to a request from the Chief, Pre-Audit Unit, Administrative Office of the United States Courts, concerning an employee's entitlement to be reimbursed temporary quarters subsistence expenses while occupying a residence owned by him. We conclude that the employee may not be reimbursed, for the following reasons.

BACKGROUND

Mr. Jerrold Cooley, an employee of the United States Probation Office, was transferred from Cheyenne, Wyoming, to Missoula, Montana, with a reporting date of April 11, 1988. On transfer, Mr. Cooley, his wife and two young children moved into a three bedroom residence owned by him in Lolo, Montana, approximately 11 miles from Missoula. He had purchased this residence (approximately 1500 square feet of living space) before his children were born and had rented it out for 3 years. In March 1988, the tenant left and Mr. Cooley put the house up for sale because, in his judgment, it was not suitable for children. According to Mr. Cooley, he intended to occupy the residence only until

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it was sold and then purchase another residence in Missoula as his permanent quarters. We understand that, as of May 1989, the residence had not been sold and that the employee and his family are still residing there.

OPINION

The authority for payment of subsistence expenses while in temporary quarters is contained in 5 U.S.C. § 5724a(a)(3) (1986), as implemented by chapter 2, part 5 of the Federal Travel Regulations (FTR) (Supp. 4, Aug. 23, 1982).^{1/} Paragraph 2-5.2c of the FTR 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."

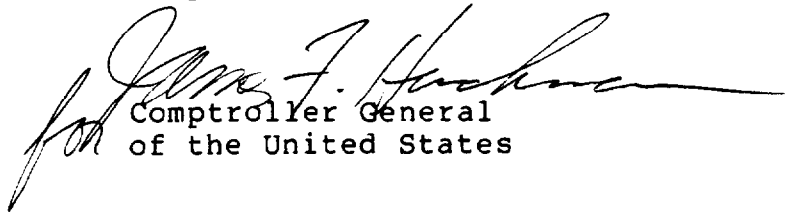
We have consistently held that a determination as to what constitutes temporary quarters must be made based on the facts of each case. If it is determined that the employee clearly intended to occupy leased or rented quarters on a temporary basis when he and his family moved into a residence, we have allowed payment even though the quarters could be occupied permanently or did, in fact, become permanent. Robert D. Hawks, B-205057, Feb. 24, 1982. Further, the fact that the employee owned the residence would not necessarily preclude temporary quarters subsistence expense reimbursement. George R. Staton, B-201574, Aug. 24, 1981. See also Allan L. Franklin, B-222136, Sept. 19, 1986. However, we have also held that an employee's failure to show that efforts were made to acquire other quarters as permanent quarters for a protracted period mitigates against reimbursement. David R. McVeigh, B-188890, Nov. 30, 1977. See also Sandra J. Samuels, B-226015, Apr. 25, 1988 (execution of a 1-year lease as an indication that occupancy of quarters was intended on other than a temporary basis).

In the present case, Mr. Cooley, his wife, and two children, ages 3 and 2, moved into a residence in the vicinity of his new duty station which they had purchased several years before his transfer. The assertion that the residence is only temporary because they have been attempting to sell it and intend to purchase another residence in Missoula as soon as it is sold, is too vague and indefinite to qualify

^{1/} Incorp. by ref., 41 C.F.R. § 101-7.003 (1988).

that residence as temporary quarters for subsistence expense reimbursement purposes. The size of the residence (approximately 1500 square feet of living space with three bedrooms), and the fact that the Cooley family has lived there for more than 1 year, indicate that occupancy of those quarters has been other than temporary as defined in FTR, para. 2-5.2c.

Accordingly, based on the record before us, payment for temporary quarters subsistence expenses may not be allowed.


for Comptroller General
of the United States