



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

CP

**Matter of:** Michael P. Callahan - Temporary Quarters  
Subsistence Expenses

**File:** B-246479

**Date:** June 9, '1992

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### DIGEST

A transferred employee was authorized 30 days temporary quarters subsistence expenses (TQSE), with two subsequent extensions, but the agency denied his claim for reimbursement for the first 30 days on the basis that he signed a 1-year lease and moved his household goods into his apartment and on-site storage. We conclude that, at the time he moved into the apartment, he only intended to occupy it on a temporary basis. The lease required no deposit and allowed cancellation on 30 days written notice with penalty, over 50 percent of his household goods were not unpacked, he made an intensive effort to locate suitable housing, and he signed a purchase agreement on a house about 5 weeks after his relocation. Moreover, employee's wife was pregnant and he knew apartment was too small for larger family. He is, therefore, entitled to reimbursement for TQSE, and our Claims Group settlement upholding the agency denial is hereby overruled.

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### DECISION

Mr. Michael P. Callahan appeals our Claims Group settlement<sup>1</sup> which disallowed his claim for reimbursement of temporary quarters subsistence expenses (TQSE) incident to a permanent change of station. We overrule our Claims Group's action for the following reasons.

### BACKGROUND

Mr. Callahan, an employee of the Social Security Administration (SSA), was transferred from his official duty station in Melbourne, Florida, to Baltimore, Maryland, with a reporting date of September 24, 1990. He was authorized an initial period of TQSE for 30 days, with two subsequent extensions.

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<sup>1</sup>Z-2867294, July 24, 1991.

Mr. Callahan states that he and his wife began looking for permanent quarters in the Baltimore area approximately 3 months prior to his transfer.<sup>1</sup> Since he could not find a residence to purchase during that time, he executed a 1-year lease on an unfurnished two-bedroom apartment and moved into the apartment with his wife and 3-year old child on September 23, 1990. Mr. Callahan also moved his household goods into the apartment or into on-site storage. He signed a purchase agreement on a residence on October 31, 1990, and went to settlement on December 28, 1990.

Mr. Callahan submitted a travel voucher claiming \$1,945.40 for TQSE for the first 30-day period. The SSA disallowed Mr. Callahan's claim on the basis of various Comptroller General decisions holding that execution of a 1-year lease and shipment of household goods indicates intent to occupy on other than a temporary basis, citing Saundra J. Samuels, B-226015, Apr. 25, 1988. ✓ Our Claims Group sustained the disallowance on the same basis.

Mr. Callahan contends on appeal that execution of a 1-year lease on the apartment was a matter of convenience. The lease required no deposit, allowed for a 30-day notice of cancellation at any time, and the penalty for early cancellation was the required payment of 2 months additional rent. Mr. Callahan also points out that the apartment was inadequate for his family, but it was the only available housing that they could afford until they were able to find and purchase suitable housing. He says that they were unable to unpack most of their belongings and essentially lived out of boxes while they stayed in the apartment. Further, since his wife was pregnant at that time, he was advised by the apartment management that he would have to move into larger quarters or cancel the lease when the baby was born since a family of four would violate the minimum housing requirement for a two-bedroom apartment. Finally, he continued looking for permanent quarters, found a good prospect within 3 weeks of relocating, and signed an agreement to purchase that house within about 5 weeks.

#### OPINION

The payment to a transferred employee of subsistence expenses while occupying temporary quarters is authorized by 5 U.S.C. § 5724(a)(3) (1988). ✓ Section 302-5.2(c) of the Federal Travel Regulation,<sup>2</sup> provides that the term

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<sup>2</sup>Mr. Callahan was on detail to SSA's Philadelphia office at the time of his transfer under its Management Intern Program.

<sup>3</sup>41 C.F.R. § 302-5.2(c) (1991). ✓

"temporary quarters" refers to lodging obtained from private or commercial sources for the purpose of occupying it temporarily after vacating the residence occupied at the old duty station when the transfer was authorized.

This Office has consistently held that a determination as to what constitutes temporary quarters is not susceptible of any precise definition and that the determination must be based upon the facts and circumstances involved in each case. The threshold determination as to whether the quarters were initially temporary in nature is based on the intent of the employee at the time he moves into the dwelling. Carl A. Zulick, 67 Comp. Gen. 585 (1988), Duane C. Wilson, B-231660.2, May 24, 1991, David M. Shannon, B-230746, Feb. 17, 1989.

The factors to be considered in determining whether quarters are temporary or permanent are the duration of the lease, the movement of household goods into the quarters, the type of quarters, expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters. Harrison J. Lane, B-183829, Jan. 2, 1976.

Although we have held that, generally, the execution of a 1-year lease on a dwelling by an employee at his new duty station is a clear indication that the employee intends to occupy the rented quarters on other than a temporary basis, Sandra J. Samuels, B-226015, Apr. 25, 1988, cited by the agency, we have also held that this Office will examine the remaining five factors in order to ascertain the intent of the employee at the time he initially occupied the quarters. Duane C. Wilson, B-231660.2, supra. Thus, the 1-year lease does not necessarily disqualify Mr. Callahan from reimbursement of TQSE.

In this case, while Mr. Callahan leased an apartment for 1 year, he did so because it was the only available housing that he could afford until he could find a house to buy. Further, the lease contained an early termination clause which allowed 30-day notice of cancellation and payment of 2 months rent as a penalty. He was prepared to exercise his right of early termination and pay the penalty, especially since his wife was pregnant when he moved in and he was advised that he would have to cancel his lease or move into larger quarters when his child was born. Thus, despite the 1-year lease, we are persuaded that Mr. Callahan intended the apartment to be only a temporary residence until he could find a suitable house for his family.

As to the movement of household goods into the apartment, Mr. Callahan states that they left over 50 percent unpacked and essentially lived out of boxes (slept on a mattress

without a box spring) while they stayed in the apartment. We have held that the movement of household goods into a dwelling is not by itself, determinative. Charles J. Wilson, B-187622, June 13, 1977. In Carl J. Zulick, supra, where the employee moved his household goods into a residence but never unpacked most of them, we held that fact did not warrant a conclusion of intent to occupy permanently. We believe that conclusion applies equally well to Mr. Callahan.

Further, the intensity of Mr. Callahan's efforts and the immediacy with which he began his attempts to locate suitable housing lend additional support to a determination that he intended to occupy the apartment only temporarily. He actually started searching for a house 3 months prior to his permanent duty assignment, and moved into the small apartment only because he was unable to find a suitable house before relocating to Baltimore. He found a suitable house within 3 weeks of his arrival and contracted to purchase it about 5 weeks after arrival. These facts demonstrate his intent to occupy the apartment only temporarily until he could find a house to buy. See Carl A. Zulick, 67 Comp. Gen. 585, supra; Duane C. Wilson, B-231660, 2 supra; Robert D. Hawks, B-205057, Feb. 24, 1982.

Accordingly, we overrule our Claims Group settlement and conclude that the apartment occupied by Mr. Callahan upon arrival in the Baltimore area constituted "temporary quarters" for which he is entitled to reimbursement of subsistence expenses.

  
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CIVILIAN PERSONNEL

Relocation

Temporary quarters

Actual subsistence expenses

Reimbursement

Eligibility