



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arthur Obester

File: B-249174

Date: August 7, 1992

DIGEST

Upon a permanent change-of-station transfer, an employee moved into quarters that he had rented during an extended detail and that he had continued to rent after the detail in anticipation of the transfer. Based on these and other facts, the agency's determination that the quarters were permanent, rather than temporary, was correct and therefore the disallowance of the employee's claim for temporary quarters subsistence expenses is sustained.

DECISION

The Export-Import Bank of the United States requests a decision on Mr. Arthur Obester's claim for temporary quarters subsistence expenses (TQSE).¹ For the reasons stated below, the claim may not be paid.

BACKGROUND

The Bank assigned Mr. Obester to Los Angeles from Washington, D.C. for a temporary duty (TDY) detail from December 1, 1987 until July 1, 1989. During the first year of this assignment, the Bank paid the cost of Mr. Obester's apartment. He then moved to another apartment and received a fixed amount for living expenses that included a portion of his rent. Upon the completion of this assignment, Mr. Obester returned to Washington, D.C. However, anticipating that the Bank would establish a West coast office in the near future, Mr. Obester continued to pay rent on a month-to-month basis for the apartment he had used during his TDY assignment.

Subsequently, the Bank did establish a West coast office in Los Angeles and selected Mr. Obester to head the office.

¹Mr. James K. Hess, Chief Financial Officer, submitted the request.

The Bank authorized a permanent change-of-station transfer effective February 24, 1991. Mr. Obester moved into the apartment he had kept since July 1989. Eleven months later, in January 1992, Mr. Obester moved to another rented apartment in Los Angeles.

The Bank paid the customary expenses associated with an employee transfer, including travel expenses to Los Angeles and the real estate expenses associated with the sale of his home in Washington, D.C. However, the Bank denied Mr. Obester's claim for TQSE for the period February 24 to June 23, 1991, in the amount of \$7,389.38. The Bank determined that the amounts claimed by Mr. Obester were not subsistence expenses incurred while occupying temporary quarters until permanent quarters were located because the quarters occupied by Mr. Obester for the time he was claiming had been located during Mr. Obester's TDY assignment and the Bank only intended to pay for his expenses to return to those quarters. Mr. Obester's travel order did not specify whether TQSE had been approved or denied.

OPINION

The payment of TQSE is governed by the provisions of 5 U.S.C. § 5724(a)(3) (1988) and the implementing regulations contained in 41 C.F.R. Part 302-5 (1991). "Temporary quarters" refers to lodging obtained from private or commercial sources for the purpose of temporary occupancy after vacating the residence occupied at the old duty station when the transfer was authorized. 41 C.F.R. § 302-5.2(c). The regulations provide that the period for temporary quarters should be reduced or avoided if the employee has made a househunting trip or has had adequate opportunity to find permanent quarters as a result of extended temporary duty or other circumstances. 41 C.F.R. § 302-5.1.

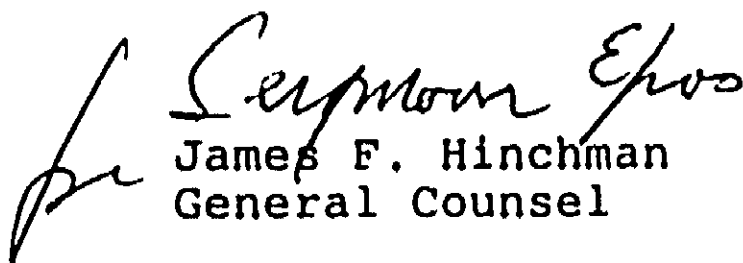
The threshold determination as to whether the quarters were initially temporary in nature is based on the intent of the employee at the time he moves into the dwelling. See Michael P. Callahan, B-246479, June 9, 1992; Curtis Millsap, B-244454, May 27, 1992; and Duane C. Wilson, B-231660.2, May 24, 1991. The factors to be considered in determining whether quarters are temporary or permanent include 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. Michael P. Callahan, supra, and cases cited.

Mr. Obester argues that because the job vacancy announcement stated that customary relocation expenses would be paid and

that TQSE are among these expenses, his claim should be paid. However, the authorities cited above constitute an authorization, not an entitlement. The determination to authorize TQSE is to be made on an individual-case basis based on procedures issued by the heads of agencies. 41 C.F.R. § 302-5.1.

In this case, the agency made the correct determination. Mr. Obester served an extended TDY detail in the area before his transfer, and afterward he relocated to an apartment he selected during that detail. Although he had a month-to-month lease, Mr. Obester stayed in the apartment for 11 months. The record includes no evidence that Mr. Obester attempted to find any other quarters upon relocating to Los Angeles in February 1991. Since Mr. Obester had an adequate opportunity to locate permanent quarters during his 18-month TDY assignment, and, in fact, paid rent for 19 months after the detail ended to keep the apartment he had rented during the detail, we believe the record supports the agency's determination that Mr. Obester intended to permanently occupy the quarters he moved into upon his transfer.

Accordingly, Mr. Obester is ineligible for TQSE for the period from February 24 to June 23, 1991.


James F. Hinchman
General Counsel