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DECISION



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

FILE: B-187212

DATE: March 7, 1977

**MATTER OF: James C. Williams - Temporary Quarters -
What Constitutes**

DIGEST: Employee continued to occupy residence at old duty station on rental basis, after he had sold it, because he was advised that under such arrangement he could be reimbursed for temporary quarters expenses. Reimbursement is not authorized because there is no objective evidence of intention by employee to vacate permanent residence quarters. Incorrect advice by agency officials cannot form basis for reimbursement.

This decision is in response to a request for reconsideration of our Claims Division Settlement Certificate Z-2583319, issued May 10, 1976, which denied Mr. James C. Williams' claim for temporary quarters allowance incurred incident to a transfer.

Mr. Williams, an employee of the Federal Highway Administration was transferred from Sacramento, California, to Fort Worth, Texas, under the authority of Travel Order No. 06-00-176 dated October 7, 1974. Mr. Williams sold his residence in Sacramento, with settlement taking place on November 12, 1974. According to Mr. Williams' statements in the record, the "buyers were to have occupancy at the close of escrow." However, settlement could not take place until the buyers were able to transfer funds from outside the United States to a California bank. Apparently at the same time Mr. Williams was notified that settlement was scheduled for November 12, 1974, he was also told that the buyers would not actually take possession until the end of that month because of a delay in shipping their household goods. The record does not disclose when the "escrow period" was completed, when Mr. Williams was notified of the proposed settlement date, nor why settlement simply could not have been delayed until the end of November, when Mr. Williams was scheduled to be transferred, and when the buyers were to receive their household goods.

At some time prior to settlement, Mr. Williams questioned officials of the Federal Highway Administration to ascertain whether or not he could be reimbursed for temporary quarters expenses if he rented his home from the buyers from the settlement date to the

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time of his actual transfer. He was advised that he could. Apparently either at or before settlement Mr. Williams reached an agreement with the buyer to pay rent of \$20 per day from the day of settlement until Mr. Williams and his family actually moved out of their home in Sacramento. Under those terms, Mr. Williams remained in his residence from the day of settlement until November 27, 1974. He then stayed in motels until he actually moved into a residence at his new duty station.

Mr. Williams was reimbursed for his temporary quarters expenses from November 27, 1974, onward. His claim for the period November 12 to November 27, 1974, was submitted to our Claims Division for decision. In the above-cited Settlement Certificate, Mr. Williams' claim was denied on the grounds that neither the employee nor members of his immediate family had vacated the home in which he was residing when the transfer was authorized.

The governing regulations are the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), which are statutory regulations, having the force and effect of law, and which may not be waived in individual cases. 49 Comp. Gen. 145 (1969). Temporary quarters are defined by FTR para. 2-5.2c, providing that:

"The term 'temporary quarters' refers to any lodging obtained from private or commercial sources to be occupied temporarily by the employee or members of his immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized."

In his request for reconsideration, Mr. Williams makes two arguments. First he argues that "vacated" should be interpreted as the phrases "vacancy in office" or "constructive vacancy" have been defined in cases he cites. That definition seems to be that, as paraphrased for the situation at hand, Mr. Williams and his family had constructively vacated their former residence because settlement had taken place, meaning that they no longer had any legal right to be there, and that they were there only in a landlord-tenant relationship with the buyer. Mr. Williams argues that this interpretation leads to an equitable result without violating the regulations or the authorizing statute.

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It should be noted that as soon as Mr. Williams' family occupied the residence while paying rent, their legal right to be in the house came into existence. Their status was that of tenants rather than owners, but their legal right to be here was clear. In B-185898, May 28, 1976, we discussed the meaning of "vacate" in the quoted regulation. We held that "vacate" in the regulation should be defined in terms of occupancy. In essence, as long as the property continues to be the customary and usual place of abode it has not been vacated.

In considering whether or not this definition has been satisfied, we have given substantial weight to an employee's intentions. In fact, we have allowed reimbursement of temporary quarters expenses to an employee who continued to occupy his residence at his old duty station. In B-181032, August 18, 1974, reimbursement was authorized when an employee continued to occupy his old residence for 4 days longer than scheduled, because, although most of his household goods had been packed for moving, the actual pick-up of the goods was delayed for 4 days by a mechanical breakdown of the moving van. In B-177965, March 27, 1973, we permitted reimbursement of temporary quarters expenses of an employee occupying his old residence, when the employee was unable to find either temporary or permanent quarters at his new duty station, because of his race. In each instance there was some objective evidence of an intention by the employee to vacate his old residence. In the instant case, Mr. Williams and his family stayed in their old residence as a matter of convenience. During the period in question, Mr. Williams was still working at his old duty station, so there was no change at all in the family's life style, they continued to occupy the same permanent quarters as they had prior to notice of the transfer. Additionally, it is not at all clear from the record why the settlement date was not delayed until Mr. Williams was actually ready to leave. The need for the buyers to transfer money from overseas established only a threshold date for settlement, not a final cut-off. It appears that it was known prior to the settlement that the buyers would not be ready to assume actual possession of the property for some time after settlement. In summary, we find no objective manifestation of an intent by the Williams family to vacate their residence prior to the date they actually moved out.

Mr. Williams also contends that the Government is now estopped to deny him reimbursement, because he was advised by officials of his agency that reimbursement could be proper if he remained in

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his former home. In B-185532, September 21, 1976, the same argument in similar circumstances was considered. There we held that the Government was not bound by the unauthorized statements of its agents. Recently, we generally considered the possibility that the Government might be estopped when dealing with its own employees in B-186218, November 10, 1976, 56 Comp. Gen. (1976). Just as we held there that the Government cannot be estopped if a statute would be violated, we believe that it is equally true when statutory regulations are involved. While it is unfortunate that Mr. Williams was incorrectly advised here, that advice cannot form the basis for reimbursement.

Accordingly, the disallowance of Mr. Williams' claim by our Claims Division is sustained.

Ray Kasten
Acting Comptroller General
of the United States