

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

- 61438

FILE: B-185508

DATE: SEP 2 1976 98084

MATTER OF:

John Castaneda - Claim for Temporary
Quarters Subsistence Expenses

DIGEST:

1. Department of Defense employee's claim for reimbursement of temporary quarters subsistence expenses incurred incident to transfer to new official duty station in the Canal Zone is allowable where claimant intended to move to family-type quarters when they became available but lived in permanent bachelor-type Government quarters during 46 days of the 60-day entitlement period.
2. The description of temporary quarters in FTR para. 2-5.2c and 2 JTR para. C8250 as "any lodging obtained from private or commercial sources" does not prohibit the payment of temporary quarters subsistence allowance when permanent-type Government-owned quarters are occupied temporarily.

This is in response to a request by the Per Diem, Travel, and Transportation Allowance Committee, PDTATAC Control No. 75-34, for an advance decision whether Mr. John Castaneda is entitled to temporary quarters subsistence expenses for the cost of lodging, meals, and laundry incurred for the period of July 16 through August 30, 1974, during which time he occupied Government-owned quarters.

The pertinent facts as they appear in the record are that Mr. Castaneda was transferred to his new official duty station at the Defense Mapping Agency in the Canal Zone effective July 2, 1974, to be joined later by his wife and two children. Upon arriving in the Canal Zone on July 2, 1974, he was assigned to quarters which were acknowledged to be for transient personnel, and he remained in those quarters until July 16, 1974, when he was assigned to permanent-type Government quarters suitable for a bachelor or unaccompanied employee of his grade level. Upon arrival of dependents on November 1, 1974, the employee and dependents continued to reside in these quarters, on a temporary basis, by special permission of the Housing Officer until November 29, 1974, when family quarters became available.

PUBLISHED DECISION
55 Comp. Gen.

098084-698084

Mr. Castaneda had been authorized 60 days temporary quarters subsistence expenses (TQSE) under the provisions of 5 U. S. C. § 5724a(a)(3) (1970) and was paid this allowance for the period of July 2 through July 15, 1974. Yet, his claim for expenses incurred from July 16 through August 30, 1974, was not acted upon because of uncertainty as to his entitlement to TQSE for a period in which he occupied permanent, Government-owned quarters rather than temporary, non-Government-owned quarters. Moreover, beginning on July 16, 1974, a regular monthly payroll deduction was initiated as a rental charge for the quarters Mr. Castaneda began to occupy on that date. Yet, the record also indicates that from the time he accepted this assignment of quarters until the time his family joined him, Mr. Castaneda manifested, both by word and action, his belief that he occupied these quarters solely on a temporary basis.

As mentioned above, section 5724a(a)(3) of title 5, United States Code, authorizes the payment of subsistence expenses incurred by an employee "while occupying temporary quarters." In an attempt to describe what is meant by "temporary quarters," the implementing regulations, see Federal Travel Regulations (FPMR 101-7) part 5 (May 1973) and 2 Joint Travel Regulations para. C8250 (change 75, December 1, 1971), provides as follows:

"Temporary quarters refers to any lodging obtained from private or commercial sources to be occupied temporarily* * *."
(Emphasis added.)

The uncertainty as to Mr. Castaneda's entitlement to the allowance arises because of confusion over the significance of the phrase "obtained from private or commercial sources." One argument asserts that since Mr. Castaneda lived in Government-owned, permanent-type quarters his lodging was not "obtained from private or commercial sources," and therefore he is not entitled to the allowance. On the other hand, the opposing argument holds that the controlling factor in this case is Mr. Castaneda's intent at the time he was occupying the Government-owned quarters, and since he viewed these quarters as only temporary until permanent-type family quarters became available, the quarters were in fact only temporary and he is therefore entitled to the allowance. Thus, the question here is whether Mr. Castaneda was occupying "temporary quarters" as defined in the pertinent regulations and as construed in our decisions.

B-185508

Yet, the term "Temporary quarters" is not defined either in 5 U. S. C. § 5724a(a)(3) or in the implementing regulations, FPMR 101-7 and 2 JTR para. C8250. Therefore, in past decisions we have stated that a determination as to whether or not a particular living arrangement constitutes temporary quarters depends on the facts of each case, giving weight to the expressed intent of the employee as manifested at the time the quarters in question are occupied. See 47 Comp. Gen. 84 (1967); B-173585, September 17, 1971; and B-184618, April 16, 1976.

In this case, Mr. Castaneda gave sufficient evidence of his intent to occupy the Government-owned quarters on a temporary basis until such time as family-type quarters became available. However, the question remains whether one who occupies permanent-type, Government-owned quarters on a temporary basis is precluded from receiving TQSE because the regulations require that lodging be obtained from "private or commercial sources."

Prior to change 38, dated August 1, 1968, 2 JTR para. C8250 provided basically as noted above. However, beginning with change 38 and continuing through change 52, dated January 1, 1970, para. C8250 dropped the requirement that lodging be obtained in "private or commercial facilities." This change was apparently initiated so that the language in 2 JTR para. C8250 would be the same as that found in Bureau of the Budget (BOB) Circular No. A-56, section 2.5b(3) (revised June 26, 1969). However, with change 75, dated December 1, 1971, the disputed phrase, "lodging obtained from private or commercial sources" was added to 2 JTR para. C8250, apparently to reflect the language in the then most recent version of BOB Circular No. A-56, section 8.2c, dated September 1, 1971. Yet, we do not believe that the addition of this phrase, so similar to the earlier discarded one, was meant to preclude the payment of TQSE to those who occupy Government-owned quarters on a temporary basis.

In explaining the purpose of the changes in what was now entitled Office of Management and Budget Circular No. A-56 (revised September 1, 1971), the "Summary of Changes" stated that there had been:

"* * * an alteration of the wording in 8.2c to make it clear that reimbursement may be allowed even though commercial quarters are not occupied."

B-185508

In other words, the phrase in question was added in order to authorize the payment of TQSF even in those situations where commercial quarters were not utilized. Therefore, it is clear that the phrase was not intended to be restrictive, but was in fact intended to allow employees greater flexibility in choosing their temporary quarters, even if it meant using Government-owned quarters.

Accordingly, since the General Services Administration's Federal Travel Regulations adopted the same language as that used in Office of Management and Budget Circular No. A-56, section 8.2c, supra, it can be assumed that the same overall result was intended. Therefore, since payment of the allowance is not prohibited by the applicable regulations, and since Mr. Castaneda only intended to occupy the quarters temporarily, he may be reimbursed for his expenses for the period July 16 to August 30, 1974, if otherwise correct.

R.F. KELLER

~~Action~~ Comptroller General
of the United States