

00825

Mr. Hubert
Civ. Pers.

DECISION



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

FILE: B-187519

DATE: January 26, 1977

MATTER OF: Erle B. Odekirk - Temporary quarters subsistence allowance

- DIGEST:**
1. Transferred employee may not be reimbursed for temporary quarters of family where family remained at new duty station 30 days, then returned to and occupied former residence for 1½ years. Although employee may have had difficulty purchasing residence at new station due to market conditions, fact that former residence was not listed for sale and that wife was employed as teacher in area of former residence after return thereto indicate that family did not intend to vacate former residence.
 2. Transferred employee may not be reimbursed for temporary quarters expenses where he remained in rented quarters for 1½ years. Because his family had not vacated former residence, his wife was employed as teacher in area of former residence, and no specific date had been set for relocation, employee's intention to purchase residence at future date was too indefinite to support conclusion that rented quarters were in fact temporary.
 3. When dependent's travel occurs after transferred employee has relocated but within 2-year period allowed by FTR para. 2-5.1b (May 1973), such travel expenses and per diem may be paid. Further, miscellaneous expense allowance may be paid up to \$200 since it may reasonably be concluded that further miscellaneous expenses were incurred.

This action is in response to a request dated September 27, 1976, from the Commander of the Navy Finance and Accounting Center, Department of the Navy, for a decision concerning a voucher submitted by Mr. Erle B. Odekirk for subsistence and temporary quarters expenses.

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Mr. Odekirk, an employee of the Department of the Navy, was transferred from Bell, California to San Diego, California. On August 5, 1974, Mr. Odekirk and his dependents departed from their old residence in West Covina, California, and obtained temporary lodgings at 2111 Mendocino Boulevard, San Diego, California, where they stayed for 30 days. At the conclusion of the 30-day period, Mr. Odekirk's dependents returned to the old residence, where they remained until February 1975.

Mr. Odekirk filed his initial travel claim on March 20, 1975, and was paid \$1,441.62 on April 27, 1975, of which \$1,206.50 represented payment of temporary quarters subsistence allowance. On April 8, 1976, Mr. Odekirk filed a supplemental claim in which he requested payment of real estate expenses for the sale of his West Covina residence, and payment for the shipment of his household effects. At the time of receipt of his supplemental claim the question arose as to whether or not Mr. Odekirk's dependents had "vacated" the old residence, as opposed to merely being physically absent from there during the period August 5, 1974 to September 3, 1974. Consequently, the \$1,206.50 temporary quarters subsistence allowance previously paid to Mr. Odekirk was deducted from his supplemental claim. An additional \$122.97 was also deducted, which amount was the mileage allowance, per diem, and one-half the miscellaneous expense allowance previously paid to Mr. Odekirk for his dependents' travel to San Diego. Mr. Odekirk has subsequently reclaimed both of the suspended items. Whether any portion of the amounts reclaimed may properly be paid is the subject of this action.

The Federal Travel Regulations (FPMR 101-7), which governs reimbursement of relocation expenses, provide at para. 2-5.2c (May 1973), that in order to be eligible for reimbursement of temporary quarters expenses, the employee and his family must have "vacated the residence quarters in which they were residing at the time the transfer was authorized." See also 2 Joint Travel Regulations, para. C8250 (May 1, 1976). There is no precise definition of the word "vacate" in the travel regulations. However, we have stated previously that each case must be evaluated on the basis of the particular facts involved. See 47 Comp. Gen. 84 (1967). Vacate has been defined as "To move out; to make vacant or empty; to leave; especially, to surrender possession by removal; to cease from occupancy." Black's Law Dictionary 1717 (Rev. 4th ed. 1968). In general, occupancy refers to the use

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of property as the customary and usual place of abode. Premises are thus vacated when one ceases to use them for the intended purposes. B-185696, May 28, 1976.

The decisions of this Office have regularly applied this interpretation in determining whether an employee has vacated his permanent residence within the meaning of the cited regulations. In considering such cases, we have consistently given substantial weight to the intent of the employee with respect to the location of permanent residence and the occupancy of temporary quarters. The inquiry generally has been whether the employee, in the light of all the facts and circumstances, has manifested by objective evidence the intent to vacate the former residence. In applying this standard we have held that an employee could be reimbursed subsistence expenses under para. 2-5.2c of the FTR where the employee's intended departure on the date of departure was delayed by the breakdown of the moving van and the employee remained in his former residence for 6 days with the special permission of the new owner. B-181032, August 19, 1974. Similarly, we have held an employee entitled to a temporary quarters allowance where the employee, after sale of his residence, was forced to rent his former residence from the new owner because by reason of his race, he was unable to locate suitable temporary quarters at either the old or the new duty station. B-177965, March 27, 1973. In these cases there was evidence of actions taken by the employee prior to and/or after departure from the former residence which supports an inference that the employee intended to cease occupancy of that residence.

Conversely, where such evidence was lacking, we have not authorized the payment of a temporary quarters allowance. Thus, where after remaining at the new duty station for 1 week, an employee's wife returned to and occupied her former residence, we held that the former residence was not vacated and denied a temporary quarters allowance, despite the fact that the wife's return may have been due to the unavailability of temporary quarters at the new station. B-185696, *supra*. In another case, an employee's wife accompanied him to the new duty station, but 6 days later returned to the old residence to arrange for the shipment of their household effects. Because she continued to reside in the old residence until occupancy of the new residence had begun, a temporary quarters allowance was denied. B-173595, September 17, 1971.

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We are of the opinion that the present claim falls within the latter category of cases. While it may be true that the availability of housing at the employee's new station was severely limited, in light of the fact that Mr. Odekirk was employed as a teacher near the old residence, the record affords us no basis to conclude that the claimant's family would not have returned to their former residence in any event. Further, in support of his claim, Mr. Odekirk has submitted a statement from Century 21 Realtors at the old station. The realtor states that:

" * * * we were holding his house in abeyance in the hopes of effecting a trade or an immediate sale * * * ."

Because Mr. Odekirk's former residence was held in abeyance, and therefore kept off the real estate market, rather than listed for sale, we view this statement as rebutting instead of supporting the employee's position because the house was thus made available for the family's occupancy. In these circumstances, it cannot be said that Mr. Odekirk's dependents had the requisite intent to vacate their former residence on August 5, 1974. Accordingly, reimbursement of the subsistence expenses of these three dependents may not be paid.

With respect to Mr. Odekirk, since he remained in San Diego after his family returned to their former residence, it is clear that he vacated that residence. That fact alone, however, does not automatically entitle a claimant to subsistence in temporary quarters. In addition, the initial quarters occupied by the employee must be intended to be temporary.

The term "temporary quarters" is not defined in either the applicable statute, 5 U.S.C. 5724a (1970), or the implementing regulations and our Office has held that the determination as to what constitutes temporary quarters must be based on the facts in each case. B-183629, January 2, 1976. The purpose of the temporary quarters allowance is to provide a transferred employee a period of time in which to obtain and occupy permanent quarters. As stated in FTR para. 2-5.2d:

"Temporary quarters should be regarded as an expedient to be used only if or for as long as necessary until the employee concerned can move into permanent residence quarters."

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In determining whether the quarters occupied are temporary in nature, we have considered such factors as the duration of a lease, the movement of household effects into the quarters, the type of quarters, any expressions of intent, attempts to secure a permanent dwelling, and the period of residence in the quarters by the employee. See B-183829, supra, and cases cited therein. Thus, although an employee may have an intention to ultimately purchase a residence, the purpose of the regulations is not satisfied unless that intention is objectively manifested by definite and substantial efforts to obtain and occupy permanent quarters.

Applying these principles, we held in 47 Comp. Gen. 84 (1967) that a transferred employee who occupied an apartment at his new duty station for 4 months prior to moving to permanent quarters was entitled to reimbursement of temporary quarters subsistence expenses for himself since he intended only to stay in the apartment for a specific period and because his family joined him immediately at the close of the school session. In another case, however, an employee signed a 6-month lease on an apartment in which he ultimately resided for the duration of his duty assignment, and did not secure permanent quarters when they became available. Based on the circumstances, we held that the employee's intention to purchase a house at some time in the future was too indefinite to support a finding that the quarters which he occupied were in fact temporary. B-185695, June 21, 1976.

In the present case, unlike 47 Comp. Gen. 84, supra, Mr. Odekirk's family manifested no present intention to vacate their former residence and to join him in San Diego at any specific date. In fact, the record shows that Mrs. Odekirk was employed as a teacher in the area of the former residence after the family returned thereto. Further, we have been informally advised that Mr. Odekirk occupied a housekeeping type apartment at 2111 Mendocino Boulevard until moving to a permanent residence approximately 1½ years later. In these circumstances, Mr. Odekirk's intention to purchase a residence at some future time is too indefinite to support a conclusion that the quarters which he occupies were in fact temporary. Accordingly, Mr. Odekirk's claim for a temporary quarters subsistence allowance may not be certified for payment.

Regarding Mr. Odekirk's claim for the travel expenses and per diem for travel of his dependents to the new duty station, FTR

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para. 2-5.1b provides that the maximum time for beginning such travel shall not exceed 2 years from the effective date of the employee's appointment. The record indicates that Mr. Odekirk reported for duty at his new station on July 29, 1974, which is, therefore, pursuant to FTR para. 2-1.4j, the effective date of his transfer. We have not, however, been furnished with the specific dates on which the claimant's family traveled to San Diego to occupy the new permanent residence, nor do we know which of his dependents made such travel. These items should, therefore, be administratively ascertained, and if it is determined that relocation travel commenced on or before July 29, 1976, travel expenses and per diem should, if otherwise proper, be paid for each dependent who made such travel.

Concerning Mr. Odekirk's claim for an additional \$100 miscellaneous expense allowance, FTR para. 2-3.3 provides that an employee with a family who is eligible for such an allowance will be paid \$200 without support or documentation of expenses. Since Mr. Odekirk's family discontinued their residence in West Covina in February 1976, and established a residence in San Diego, it may reasonably be concluded that some additional miscellaneous expenses were incurred incident thereto. B-181611, December 26, 1974. Accordingly, an additional \$100 may be paid to increase the total miscellaneous expense allowance to \$200.

The voucher is for disposition in accordance with the above instructions.

Deputy

Atkinson
Comptroller General
of the United States