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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20518**

FILE: B-189417

DATE: December 21, 1977

MATTER OF: Robert E. Larrabee, Per Diem

DIGEST: 1. Employee purchased residence at temporary duty location after assignment there, relocated household and rented out residence at permanent duty station. He may be paid a per diem allowance in connection with occupancy of purchased residence while on temporary duty based on the meals and miscellaneous expenses allowance plus a proration of monthly interest, tax, and utility costs actually incurred. Case is distinguished from 56 Comp. Gen. 223 (1977) involving employee whose second residence, where he lodged while on temporary duty, was maintained as result of employee's desire to maintain second residence without regard to temporary duty assignment.

2. Employee given temporary duty assignment for a 5-month period, which assignment was extended for 2 additional 6-month periods, may be paid per diem while at that location since circumstances do not demonstrate that agency's designation of assignment as for temporary duty rather than as a permanent change of station was improper. Circumstances should be reevaluated prospectively to determine whether employee's continued assignment to that location should now be made on the basis of a permanent change of station.

This decision is rendered in response to a request submitted by the disbursing officer for the Naval Weapons Center, China Lake, California, for an advance decision concerning reimbursement of the travel expenses claimed by Mr. Robert E. Larrabee. The travel claims in question cover the period from February 9, 1976, through April 30, 1977, during which period Mr. Larrabee was assigned to temporary duty as the Navy's technical representative at a contractor's facility in Richardson, Texas. The disbursing officer's question concerning reimbursement of the amounts claimed

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as per diem arises from the fact that Mr. Larrabee purchased a residence in Plano, Texas, some 12 miles distance from the contractor's plant, and resided there throughout the period of the temporary assignment.

By travel orders dated January 9, 1976, Mr. Larrabee was initially assigned to duty at Richardson for the period from February 9 through June 30, 1976. That assignment was twice extended, the first time for the period from July 1 through December 31, 1976, and the second time for the additional period from July 1 through December 31, 1977. In connection with his initial assignment to Richardson in February of 1976, Mr. Larrabee rented the house in Plano which he purchased on February 28, 1976. During the month of February 1976 he moved his family, together with his household goods and personal effects, to Plano, Texas, and rented out his residence in the vicinity of his permanent duty station at China Lake, California.

For the period from February 9 through December 31, 1976, Mr. Larrabee submitted per diem claims based on lodging costs of \$18.35 per night or less, without additional documentation. For the period commencing January 1, 1977, he claimed lodging costs varying between \$15.84 and \$19.64 per night. It was not until the period subsequent to January 1, 1977, when lodging receipts were required to be submitted in support of claims for per diem, that the disbursing office became aware of the fact that those claims, including claims paid for the preceding period, were based upon lodging costs attributable to the employee's occupancy of his own residence. The daily lodgings amounts claimed by Mr. Larrabee for the period subsequent to January 1, 1977, are based on a monthly proration of his interest costs, property taxes, and utility costs.

Based on the provisions of 2 Joint Travel Regulations para. C4550-5, in effect for the period of the temporary duty assignment in question and our decision B-187129, January 4, 1977, published at 56 Comp. Gen. 223 (1977) the disbursing officer questions the propriety of reimbursing Mr. Larrabee for the amounts claimed, particularly in view of the fact that Mr. Larrabee has expressed an intention to compete for a permanent assignment in Dallas, Texas. He suggests that in lieu of the temporary duty costs claimed, the employee should be reimbursed for costs incurred on the basis of a permanent change of station.

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The disbursing officer's suggestion that Mr. Larrabee's expenses be reimbursed on the basis of permanent change of station to Richardson assumes that the temporary duty assignment to that location was in fact a permanent assignment. While the location of an employee's permanent station presents a question of fact and is not limited by the administrative designation, and while the length of Mr. Larrabee's assignment to Richardson is of such duration as to raise a question concerning the validity of its designation as his temporary duty station, under the circumstances we take no exception to that designation for the purpose of claims which have heretofore accrued. In this regard, we find particularly persuasive the fact that the assignment was initially intended to cover only a 5-month period and that the assignment was extended for no more than 8 months at a time. At the time the initial orders were issued it appears that the assignment was intended to be of sufficiently short duration to constitute a legitimate temporary duty assignment. As a matter of hindsight, given the total duration of the assignment as twice extended, it would appear that Mr. Larrabee should have been given permanent change of station orders at the outset. However, assuming that the orders were twice extended on the legitimate expectation that the assignment would terminate at the end of each extension period, we find no basis to question the Navy's designation of Mr. Larrabee's assignment as for temporary duty insofar as that designation affects the claims submitted. See B-174662, May 3, 1972. Cf. Matter of Stanley N. Hirsch, B-187045, August 3, 1977.

We understand, however, that Mr. Larrabee continues to be assigned to duty in Richardson. Given the facts that he now owns a nearby residence and has relocated his family to Plano, and inasmuch as he would not be entitled to residence purchase expenses or to a significant portion of the expenses ordinarily associated with a permanent change of station, a comparison should be made of the anticipated cost of retaining him in Richardson in a temporary duty status and transferring him there. Any further assignment to Richardson should be effected in accordance with that cost comparison, together with a consideration of the anticipated duration of the Texas assignment and prospects of reassignment to China Lake. In Mr. Larrabee's case, since there has been no determination that he will be selected for the position for which it is understood he intends to apply, any such intention on his part is an inappropriate basis, in and of itself, to order a permanent change of station.

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In light of the fact that we find no basis to question the Navy's designation of Richardson, Texas, as Mr. Larrabee's temporary duty station, our consideration of his per diem claims will be based on the assumption that China Lake continued to be his permanent duty station throughout the claim period involved. Throughout the period of the claim involved, the JTR has provided at para. C4550-5 or otherwise as follows:

"TEMPORARY DUTY PERFORMED AT PLACE OF FAMILY DOMICILE. An employee, who performs temporary duty at the place of his family domicile which is other than the place from which he commutes to work each day when on duty at his permanent duty station, may be authorized payment of per diem even though meals and lodgings are taken at such domicile. Authority will be for only such per diem as is justified by the circumstances and will not exceed the amount required to meet necessary allowable expenses. The travel approving official will be responsible for determining an appropriate reduction."

On August 1, 1977, that provision was superseded by the following language of 2 JTR para. C4552-2m:

"m. Temporary Duty Performed at Place of Family Domicile. When an employee performs temporary duty at the place of his family domicile, which is other than the place from which he commutes to work each day while on duty at his permanent duty station, per diem will be computed in accordance with the provisions of subpar. a, except that no cost for lodging will be allowed for any day that the employee occupies lodgings at the family domicile (E-187129, 4 January 1977)."

The above-noted change in the JTR, though inapplicable to the period covered by Mr. Larrabee's claim, reflects this Office's decision. There we held that an employee who stays at a family residence while performing temporary duty may not be reimbursed lodging expenses based on mortgage, utility, and maintenance expenses. The employee involved in that case maintained a residence in the vicinity of his permanent duty station in Washington, D. C.,

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as well as in Atlanta, where his family resided. His claim for lodging costs of \$19 per day while on temporary duty residing at his Atlanta residence, based on his monthly mortgage, utility, and maintenance costs were denied. The following excerpt is from the holding of that case.

"* * * Here, the claimant maintained a second residence in Atlanta for family reasons. The costs of purchasing and maintaining the residence were incurred by reason of his desire to maintain a second residence, and not by virtue of his travel. The claimant obligated himself to pay these costs independently of and without reference to his travel. In short, his mortgage, and maintenance payments would have been made irrespective of the travel. As such, they are not properly for reimbursement."

To the same effect, see Matter of Fred Frishman, B-186643, May 9, 1977.

The circumstances involved in the above-cited cases are to be distinguished from Mr. Larrabee's situation in that the residence in connection with which he claims lodgings costs was purchased after his need for lodgings at the temporary duty site became apparent. Compare Matter of Dr. Curtis W. Tarr, B-181294, March 16, 1976, and Matter of Fred Frishman, B-186643, October 28, 1976. In Mr. Larrabee's case it would be unreasonable to conclude that the costs of maintaining his Plano, Texas, residence were incurred merely by reason of his desire to maintain a second residence when the circumstances clearly demonstrate that that residence was purchased because of the temporary duty assignment. Under these circumstances, the fact that he rented out his California residence during the period of the temporary duty assignment and relocated his household to the temporary duty site does not defeat his entitlement to lodging costs in connection with his occupancy of the Texas residence for the period of the temporary duty assignment. See Matter of Nicholas G. Economy, B-188515, August 18, 1977.

In view of the fact that Mr. Larrabee's Plano, Texas, residence was purchased and maintained in connection with his temporary duty assignment, he may be paid a per diem allowance in connection with his occupancy of that residence while on temporary duty in

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Richardson, Texas, based on the standard meals and miscellaneous expenses allowance of \$16 per day, plus lodging costs determined as a proration of monthly interest, property tax, and utility costs actually incurred. In determining his daily lodging costs, these monthly costs should be divided by the number of days in the month and not be the number of days the employee actually occupied the residence. See Economy, supra, and Tarr, supra. His transportation expenses are reimbursable to the same extent as if he occupied rented quarters at the temporary duty location.

AKM
Deputy Comptroller General
of the United States