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DECISION



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

FILE: B-189623

DATE: March 2, 1981

MATTER OF: *Claim for Reimbursement of* Burney P. C. Boote - Actual subsistence expense - reconsideration

DIGEST: Employee on temporary duty in New York may not be reimbursed full cost of apartment rental, utilities and maid service when she shares the apartment with her husband whose official permanent duty station is New York. The facts that she and her husband choose to maintain a second residence in Washington or that she was living in the apartment in New York prior to his joining her do not provide a basis for reimbursing her any more than the additional costs he may have incurred as a result of her joint occupancy of the New York residence. B-189623, May 19, 1978, affirmed.

Mrs. Burney P. C. Boote, through the Assistant Attorney General for Administration, Department of Justice, requests reconsideration of that portion of our decision of May 19, 1978, B-189623, which denied her claim for reimbursement of lodging costs consisting of apartment rental, telephone, utility, and maid service charges, incident to her temporary duty during 1977 in New York City. For the reason set out below the prior decision is affirmed. In that decision we held in effect that these expenses could not be reimbursed because the address of the apartment for which these expenses were claimed was the permanent address of Richard H. Boote, Burney P. C. Boote's husband whose official duty station was New York, and with whom she was staying while on temporary duty there. We applied the rationale that reimbursement of expenses for noncommercial lodgings provided by friends or relatives is limited to the additional costs actually incurred by the host providing the lodgings, an amount considerably less than similar motel charges. The claimed expenses of apartment rental and telephone, utility, and cleaning charges were not correlated to the additional costs that R. H. Boote incurred as a result of Mrs. Boote's stay in the apartment during her period of temporary duty. Instead they were the entire expenses incurred rather than additional costs, and accordingly they were held not reimbursable.

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As indications that the New York City apartment was Richard H. Boote's residence and permanent address our decision noted that telephone and utility bills were sent to him there. These bills were paid by checks that had printed thereon the names of Burney and Richard Boote at the address of the New York City apartment.

Mrs. Boote has provided new evidence purporting to show that Richard H. Boote's permanent address and permanent residence was in Washington, D.C., during the time that she claimed subsistence expenses and purporting to show that Mr. Boote's official duty station was erroneously changed from Washington, D.C., to New York City in December 1976, immediately prior to the period of her subsistence claim. She also has provided a historical explanation that she was in fact living in the New York City apartment on temporary duty beginning in 1975--before Richard H. Boote joined her in the New York City apartment in 1976--and she contends that her prior occupancy of the apartment makes inappropriate our rationale limiting reimbursement expenses to costs actually incurred by the host friend or relative providing quarters because she was actually the "host" in the New York City apartment and her husband the visitor. For the following reasons, we find that Mrs. Boote's new evidence fails to establish: (1) that Richard's official duty station was erroneously changed to New York City; (2) that Richard did not have a residence and permanent address in the New York City apartment; and (3) that it would be inappropriate to consider Richard as a host providing noncommercial lodgings to a friend or relative. Accordingly, our decision of May 19, 1978, is affirmed.

RICHARD BOOTE'S OFFICIAL DUTY STATION

Mrs. Boote states that:

"In January 1977, R. H. Boote was informed by Bruce Patrick, then the Administrative Officer, Antitrust Division, that R. H. Boote's duty station had been changed retroactively because of 'clerical error' from Washington, D.C. to New York City. Such change of duty

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station was made without notice to R. H. Boote before the fact, and without his consent.

* * * (See attached memo to files of R. H. Boote, dated January 28, 1977)."

Mrs. Boote's new evidence is a copy of Mr. Boote's memo to files, which says in pertinent part:

"* * * Mr. Patrick informed me that the change of duty station was apparently a clerical error which occurred when my status was changed from Law clerk to Attorney status, but that he would not now correct my duty station back to Wash., D.C." (Emphasis supplied.)

Mrs. Boote provides no further evidence from Mr. Boote, Mr. Patrick, or anyone else which would indicate whether the change of duty station from Washington to New York City was in fact a clerical error, accomplished improperly, or whether it was intentionally accomplished in the normal course of business. The Administrative Office of the Department of Justice provided supplemental documentation at our request to clarify this point. Copies of Notification of Personnel Action, DOJ Form 50, concerning R. H. Boote, showed that Mr. Boote was hired in August 1976 at the Department of Justice with an official duty station of Washington, D.C.; that effective December 5, 1976, Mr. Boote's duty station was changed from Washington to New York City when his status changed from law clerk to trial attorney; and that from December 5, 1976, through March 1980 Mr. Boote's official duty station was New York City. In addition, an abstract of Mr. Boote's travel vouchers during the same period as Mrs. Boote's claimed subsistence expenses, provided by the Administrative Office, showed that Mr. Boote performed travel on four different occasions from New York City to Washington, D.C., and return, and that New York City was the official duty station and Washington the temporary duty station. The Administrative Office was not aware of any complaint by Mr. Boote concerning his change of official station, and it could not interview Mr. Patrick since he had long since left the Department. Therefore, even though Mrs. Boote may be correct that Richard was assigned temporary duty in New York City

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after he was hired in Washington, D.C., in 1976, her new evidence has not shown that the DOJ Form 50's and travel abstract were erroneous in showing that Richard's official duty station had been changed to New York City. To the contrary, since New York was the place where he was required to spend most of his time, it appears to have been properly designated as his official duty station. See 31 Comp. Gen. 289 (1952) and 36 Comp. Gen. 161 (1956).

RICHARD BOOTE'S RESIDENCE AND PERMANENT ADDRESS

Mrs. Boote states that:

"At no time prior to August 1977 did either R. H. Boote or B. P. C. Boote maintain a permanent residence anywhere but Washington, D.C. Throughout the period of her temporary duty in New York City B. P. C. Boote continued to share the payment of rent with R. H. Boote on quarters in Washington, D.C., which housed the household goods and belongings of R. H. Boote and B. P. C. Boote. * * *"

She provided new evidence in the form of copies of cancelled checks for rent payment on the Washington residence and a copy of an insurance contract for the Washington address covering the period of August 17, 1976, through August 17, 1977.

While Mr. and Mrs. Boote may have chosen to maintain a residence in Washington during the time period for which Mrs. Boote claimed subsistence expenses, that is essentially not material in the situations--as this one appears to be--where two "permanent residences" are maintained. Mrs. Boote admits that she and her husband were living together in the New York City apartment beginning in September, 1976, and continuing through August 1977.

Although Mr. and Mrs. Boote may have considered the residence they chose to maintain in Washington as their permanent residence, this did not preclude them from concurrently maintaining the New York City apartment as

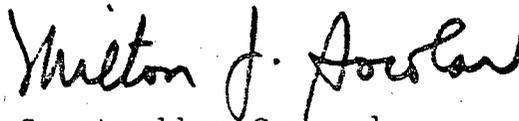
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Mr. Boote's address and residence at his duty station for the time period of the claimed subsistence expenses, and we find nothing in the new evidence to indicate that that is not what was done. We have held that where an employee has maintained two residences and stayed in one of them while on temporary duty, reimbursement is not authorized of the expenses of maintaining one of the residences as lodging expenses incident to the temporary duty if the expenses were not incurred because of the temporary duty. 56 Comp. Gen. 223 (1977).

RICHARD BOOTE'S STATUS AS A HOST

While as Mrs. Boote indicates, she may have been living in the New York City apartment on temporary duty prior to Mr. Boote joining her there we do not believe that the sequence of occupancy should determine whether it is appropriate to consider Mr. Boote as a host providing lodgings to a friend or relative. Since Mr. Boote's official duty station was New York and he chose to make his residence the New York City apartment where Mrs. Boote was staying on her temporary duty assignment, the reason for the occupancy of the apartment included its use as Mr. Boote's residence at his official duty station. In the circumstances since the residence was used for both Mr. and Mrs. Boote, it became appropriate to consider Mr. Boote as a host providing noncommercial lodgings to a friend or relative.

Accordingly, the decision of May 19, 1978, denying reimbursement of expenses of apartment rental, telephone, and cleaning charges because they were not correlated to any additional costs incurred as the result of Mrs. Boote's stay in the apartment during her period of temporary duty, is affirmed.



For the Comptroller General
of the United States