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J. Boistord

DECISION

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

FILE: B-190108 DATE: February 13, 1978

MATTER OF: Jack P. Collins - Subsistence Allowance - Loan Fee

DIGEST: 1. Transferred employee's claim for temporary quarters experses for continued occupancy of former residence after household goods were removed may not be allowed. Residence at old duty station was not vacated within the meaning of FTR para. 2-5.2c. Nor may claim for temporary quarters expenses for occupancy of residence at new duty station before household goods were delivered be allowed. Evidence shows employee's intent was to occupy new residence on a permanent basis.

2. Amount of $537, paid by employee as a loan fee to obtain a mortgage on his new residence is not reimbursable since it is a finance charge under the Truth in Lending Act and Regulation Z. See para. 2-6 2d of the FTR.

This decision arises from a request dated September 9, 1977, from William J. Buckingham, an authorized certifying officer of the Energy Research and Development Administration, now the Department of Energy, concerning the propriety of reimbursing Mr. Jack P. Collins for certain expenses he incurred in connection with a change of his permanent duty station.

Mr. Collins, an employee at the Schenectady Naval Reactors, was transferred to the Richland Operations Office in Richland, Washington. Mr. Collins sold his house in Scotia, New York, and bought another in Richland. He reported to his new duty station on February 7, 1977, and claimed reimbursement for shipment of household goods, temporary quarters, real estate expenses, and miscellaneous expenses.

Mr. Collins was reimbursed for all the subsistence expenses he claimed except $106.50, representing the cost of meals for himself and his family on January 24 and 25, and February 12, 1977. Of that

amount, $66 represents the cost of meals eaten out while the Collins' family remained in their Scotia, New York, residence after their household goods were picked up by the carrier on the morning of January 24. Mr. Collins and his family did not leave for Richland until the afternoon of the 25th, after the closing on their house and the end of the school day. Mr. Collins is therefore seeking reimbursement for breakfast, lunch, and dinner on January 24, and breakfast and lunch on January 25, 1977.

On his original voucher, Mr. Collins also claimed $40.50 for breakfast, lunch, and dinner eaten out on February 12, after he had moved into his new residence in Richland on February 11, 1977. Because his household goods arrived at approximately 6 p.m., February 12, Mr. Collins states that dinner could have been prepared at home and he is therefore no longer claiming reimbursement for that meal.

The certifying officer reports the reasons for disallowance of Mr. Collins' claim as follows:

> "1. We disallowed $66.00 for meals claimed under temporary quarters while employee and family continued occupation of residence at former duty station. It is our interpretation under paragraph 2-5.2c of the Federal Travel Regulations that the movement of furniture from a former residence does not constitute vacation of the residence and therefore cause the start of temporary quarters but rather, the employee and his family must physically vacate the residence before temporary quarters can begin.
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> "2. We disallowed $40.50 for meals claimed under temporary quarters after employee and his family began occupation of new residence. It is our interpretation under paragraph 2-5.2f of the Federal Travel Regulations that allowance of temporary quarters ended upon occupation of permanent residence by employee and his family and absence of furnishings in the residence had no bearing."

Paragraph 2-5.2a of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR) provides, in pertinent part, that:

> "* * * Subsistence expenses of the employee for whom a permanent change of station is authorized or approved and each member of his immediate family * * * shall be allowed for a period of not more than 30 consecutive days while the employee and family necessarily occupy temporary quarters and the new official station is located in the 50 states, the District of Columbia, United States territories and possessions, the Commonwealth of Puerto Rico and the Canal Zone * * *." (Emphasis added).

As is clear from the above, an employee's entitlement is contingent upon his occupying temporary quarters. Paragraph 2-5.2c of the FTR defines temporary quarters as follows:

> "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."

Reimbursing Mr. Collins for meals eaten out on January 24 and 25, depends on whether he and his family may be considered to have vacated their residence as required by FTR para. 2-5.2c. We have held that "vacate" in the cited 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. See Matter of Charles C. Werner, B-185696, May 28, 1976, and Matter of James C. Williams, B-187212 March 7, 1977.

However, we have allowed reimbursement of temporary quarters expenses to employees who continued to occupy their residence at their old duty stations where there was some objective evidence of an intention by the employees to vacate their old residence prior to the date on which they actually moved out. For instance, in Matter of Beverly L. Driver, B-181032, August 19, 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. It should also be noted in this case that the settlement for the occupied home occurred on the day the household goods should have been picked up, and the employee was able to remain in the house only at the sufferance of the new owner. 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.

Mr. Collins argues that his intention to vacate his residence was clear in that he accepted a new job, sold his house, and moved the furniture. There is no evidence, however, that Mr. Collins or his family ever intended to vacate their residence prior to the date on which they moved out, which includes the period for which they are claiming temporary quarters expenses. As a result, Mr. Collins may not be reimbursed for the cost of meals incurred on January 24 and 25, since he has not demonstrated that he intended to "vacate" his residence prior to January 25, 1977.

As we stated earlier, an employee's entitlement to subsistence expenses when his duty station has been permanently changed is contingent upon his occupying temporary quarters. Since it is clear that it was Mr. Collins' intent to occupy the residence in Richland on a permanent basis, he is not entitled to reimbursement for meals on February 12, 1977.

We have previously held in a long line of decisions that such factors as adequacy of furnishings, presence or absence of employee's household effects, and the lack of completion of living arrangements do not determine whether the living quarters are permanent or temporary. See B-169923, August 14, 1970, and decisions cited therein. Therefore, the fact Mr. Collins had no household effects at either his old or new residence during the periods for which he is claiming subsistence, does not affect our decision.

Nor is our decision affected by Mr. Collins' argument that he decided not to occupy motels in order to save the Government money. We have held that although an employee may save the Government money by arrangements such as those Mr. Collins made, that fact does not

serve to change his entitlements. See Matter of William E. Justice, B-184579, June 14, 1976; B-177546, February 8, 1973; B-175913, June 19, 1972; and B-174971, February 28, 1972.

In addition to making a claim for subsistence expenses, Mr. Collins is seeking reimbursement for a loan fee of $637 he paid to obtain a mortgage on his new residence. He did not make this claim previously because he had been informed that loan fees were not reimbursable.

The authority to reimburse a Government employee for expenses incurred in connection with real estate transactions upon official transfer of duty station is found in 5 U.S.C. 5724(a) (1970). The governing regulations implementing this statute are contained in chapter 2, part 6 of the FTR.

Federal Travel Regulation para. 2-6.2d provides in pertinent part that:

> "* * * no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System."

Section 106 of the Truth in Lending Act, Title 1, Pub. L. 90-321, 15 U.S.C. 1604 (1970), provides the following guidelines for determining whether a particular charge is an excludable expense or a part of the finance charge:

> "(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:
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> "(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.
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> "(2) Service or carrying charge.

"(3) Loan fee, finder's fee, or similar charge.

"(4) Fee for an investigation or credit report.

"(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

* * * * *

"(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, title insurance, or similar purposes.

"(2) Fees for preparation of a deed, settlement statement, or other documents.

"(3) Escrows for future payments of taxes and insurance.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

Regulation Z (12 C.F.R. Part 226), was promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, and sets forth the foregoing in substantially the same form.

Although a "loan fee" is clearly listed as a finance charge in section 106 (a)(3), of the Truth in Lending Act, Mr. Collins questions this definition since there is no differentiation between loan fees, which are fees for services, and loan discounts or points which are

essentially interest charges. Furthermore, Mr. Collins points out that he has been reimbursed for escrow and application fees which were listed on the loan disclosure statement along with the loan fee as prepaid finance charges. He questions why he was reimbursed for these charges and not for the loan fee when they all appear to be service charges.

The purpose of the Truth in Lending Act is set forth in 15 U.S.C. 1601 (1970) as follows:

> "The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."

In furtherance of the purpose of the act to provide full disclosure of credit terms, the definition of finance charges was drafted so as to include all charges incident to the extension of credit and not just interest. The lack of differentiation between service charges and interest charges was, therefore, purposeful.

With respect to Mr. Collins' questions concerning the escrow fee, we have consistently held that such charges are reimbursable when there is no indication that any part thereof is related to the extension of credit. See B-176663, February 20, 1973; B-175374, April 12, 1972; and B-170007, July 13, 1970. We assume that since Mr. Collins was reimbursed for the fee, it was not related to the extension of credit and would have been imposed even if Mr. Collins had paid cash for his house.

Paragraph 2-6.2(d) of the FTR provides that the fee for a Federal Housing Administration (FHA) or Veterans Administration (VA) loan application may be reimbursed. In B-169790, July 2, 1970, when asked whether a FHA loan application fee was reimbursable in light of the definition of a finance charge as set forth in the Truth in Lending Act we stated:

"Section 203.12(a) of the FHA Regulations requires that mortgagees pay the FHA fee to cover the cost of processing an application. Property appraisals by FHA personnel are a part of the processing procedure. The fee for an application involving existing construction is $35 and for proposed construction it is $45 as more than one appraisal occurs. The Federal Reserve Board advises that is has determined the FHA application fee falls within the category of an 'appraisal fee' under section 226.4(e)(5) of Regulation Z and, therefore, would not be a finance charge under the Truth in Lending Act. We concur in that finding."

The fee to which Mr. Collins refers is neither an FHA or VA application fee. Apparently the Columbia Mortgage Company, which gave Mr. Collins a mortgage, sold that mortgage to the Federal National Mortgage Association (FNMA). We have been advised that in connection with this type of transaction it is customary for a mortgage company extending a conventional, uninsured mortgage to submit the loan package to FNMA for review before extending credit to the mortgagee. The fee, which in Mr. Collins' case, was $18, is imposed by FNMA to cover the expenses they incur in an examination of a loan package. As a result, we believe that the FNMA fee is similar in nature to the VA or FHA loan application fee. Therefore, like those fees, it can be considered to be an appraisal fee under section 106(e)(5), supra, of the Truth in Lending Act, and is thus excludable from the computation of the finance charge.

In accordance with the above, since the application and escrow fee can be distinguished from the loan fee, the fact that Mr. Collins was reimbursed for the former expenses does not entitle him to reimbursement of the loan fee.

Deputy Comptroller General
of the United States