5 Annuities
PLM 2
118778

DECISION

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

FILE: B-205579 DATE: June 21, 1982

MATTER OF: Constance A. Hackathorn

DIGEST: 1. Employee, who was authorized temporary quarters subsistence expenses in connection with a permanent change of station, is not entitled to reimbursement of the amount paid for lodgings in a private residence in the absence of evidence that the rental agreement was the result of an arm's-length business trarsaction between the parties, or that the expenses were otherwise reasonable and within the standards set forth in 52 Comp. Gen. 78 (1972).

2. In accordance with Matter of Lay, 56 Comp. Gen. 561 (1977), employee is entitled to reasonable attorney fees for advisory and representational services rendered in connection with the purchase of a residence at new duty station if the charges are customarily paid by the purchaser of a residence in the locality involved and within the customary range of charges for such services in the locality.

This action is in response to the request of Mr. Dennis A. Sykes, Certifying Officer for the Bureau of Land Management, Department of the Interior, for a decision concerning the claim of an employee, Ms. Constance A. Hackathorn, for certain expenses incurred in connection with a permanent change of station. In her travel authorization, Ms. Hackathorn was authorized relocation expenses including those provided for by 5 U.S.C. § 5724a (1970).

At issue in this case is Ms. Hackathorn's claim for temporary quarters subsistence expenses and for attorney fees incurred in her purchase of a residence at the new duty station. We conclude that she is not entitled to the claimed expenses for lodgings based on the present record but that she is entitled to reimbursement of the attorney fees.

TEMPORARY QUARTERS SUBSISTENCE EXPENSES

During the authorized 30-day period for occupancy of temporary quarters Ms. Hackathorn rented a room in the private residence of an acquaintance of a friend at a cost of $18 per day. The rental included utilities and use of laundry and dinette facilities.

The agency denied payment as claimed for the room rental on the basis that the expenses claimed for lodging in a private residence were not supported by information indicating that the charges were the result of extra expenses incurred by the homeowner on account of the employee's occupancy. Instead, the agency allowed Ms. Hackathorn $5 per night, which is its standard reimbursement rate when an employee who stays in a private residence does not base the claim on the additional cost to the host on account of the employee's lodging. Notwithstanding its disallowance of amounts in excess of $5 per day the agency confirms Ms. Hackathorn's contention that the $18 amount she paid for lodging in the private residence is competitive with charges by commercial establishments in the area for a room with a kitchenette.

In its submission the agency cites Comptroller General decisions 55 Comp. Gen. 856 (1976) and Matter of Johnson, B-175787, April 22, 1975, in support of its disallowance of amounts in excess of $5 per day. The agency also enclosed copies of our decisions, 56 Comp. Gen. 321 (1977); Matter of Ennis, B-190716, May 9, 1978; and Matter of Smith, B-184946, March 10, 1976, in explanation of the basis of its actions on this portion of the claim.

Paragraph 2-5.2c of the Federal Travel Regulations (FTR) (FPMR 101-7, 1973), in effect at the time the claimed expenses were incurred, includes lodging obtained from private sources as temporary quarters for which expenses incurred by an employee in connection with a change of permanent station may be reimbursed.

In cases where an employee occupies temporary quarters in the home of a friend or relative, we have consistently held that payable claims for such lodging expenses must be considerably less than charges for

commercial accommodations and correlated with additional costs actually incurred by the host. In 52 Comp. Gen. 78, 82 (1972) we stated:

> "* * * It does not seem reasonable or necessary to us for employees to agree to pay relatives the same amounts they would have to pay for lodging in motels or meals in restaurants or to base such payments to relatives upon maximum amounts which are reimbursable under the regulations. Of course, what is reasonable depends on the circumstances of each case. The number of individuals involved, whether the relative had to hire extra help to provide lodging and meals, the extra work performed by the relative and possibly other factors would be for consideration. * * *"

In line with the above decision we have consistently held that claims involving noncommercial lodgings should be supported by information indicating that the lodging charges are the result of expenses incurred by the party providing the lodging. 55 Comp. Gen. 856.

The cases cited by the agency in support of its denial of lodging expenses as claimed are similar to this line of decisions in that they concern situations in which the employee claimed expenses for temporary residence in the home of a friend or relative. In this case, Ms. Hackethorn asserts that although she rented quarters in a private residence, it was not the residence of a close friend or relative. If she entered a business agreement to rent temporary quarters from a private property owner to whom she was only referred by a friend and the lodgings were not provided as an accommodation to her but as a business arrangement, then the referenced cases would not be applicable. However, the applicability of the rule in these cases does not depend upon the relationship between the employee and the person supplying lodgings, but upon whether the quarters were furnished as a business proposition or whether they were furnished as a personal accommodation to the employee.

The best evidence that a purely business arrangement is involved would be evidence of a continuing practice of the homeowner to rent out the room for an established price. That does not appear to be the case here. The situation in this case is similar to that in 55 Comp. Gen. 856, in which the employee resided in the home of his son's neighbor while he was on temporary duty and claimed an amount that would assure his recovery of the maximum per diem allowance. In that case in which there was no evidence that the occupancy arrangement was the result of a business relationship we rejected the suggestion that reimbursement should be based on a comparison with charges by commercial establishments and denied reimbursement in the absence of information establishing that the rate claimed bore a relationship to the expenses incurred by the son's neighbor as a result of the employee's stay.

Although Ms. Hackathorn's daily subsistence expenses are within the maximum established by 5 U.S.C. § 5724a(a)(3) for reimbursement of temporary quarters subsistence expenses, the rate she paid to the private homeowner was comparable to what she would have paid for commercial lodgings. Otherwise, there is no evidence showing how the cost was established or that the lodging arrangement was the result of a purely business transaction between the parties.

Under the provisions of FTR paragraph 2-5.4a, reimbursement is allowed for reasonable actual subsistence expenses incident to occupancy of temporary quarters. In accordance with the applicable standards set forth at 52 Comp. Gen. 78, the agency has determined that the cost of residing in a private residence in this case was not reasonable. Since the evidence provided does not clearly refute that conclusion it will not be disturbed by us. Accordingly, Ms. Hackathorn's claim for additional lodging expenses is denied.

ATTORNEY FEES

Ms. Hackathorn also claims attorney fees that were paid for legal services provided in connection with her purchase of a residence at the new station on January 29, 1981. The itemized fees are as follows:

Office and telephone conferences with Ms. Hackathorn and attorneys for the seller and the finance company	1-1/2 hours
Preparation of Amendment to Receipt and Option Contract; Review of Receipt and Option Contract	1/2 hour
Services at closing	2 hours
Total Time	4 hours
at $75 per hour =	$300.00
Mileage: 26 miles at 20 cents per mile	5.20
	$305.20

The agency allowed $37.50 for the 1/2 hour the attorney devoted to preparing an amendment to and reviewing the Receipt and Option Contract. The balance of the attorney fees, the agency denied, stating as its only basis that the fees for services at closing were not reimbursable since the claimant's attorney did not prepare the closing statement and conduct the closing. In support of its position, the agency cites our decision, Matter of Walldorff, 57 Comp. Gen. 669 (1978).

Our decision in Walldorff is not applicable to the expenses claimed by Ms. Hackathorn since the date of settlement was subsequent to our decision in Matter of Lay, 56 Comp. Gen. 561 (1977). As is explained in Walldorff at page 612, our decisions prior to Lay held that under the authority of FTR paragraph 2-6.2c, attorney fees paid by an employee for legal representation and advice in connection with the sale or purchase of a residence are not reimbursable. However, on the basis of Congress' recognition of the complexities of real estate settlement practices in the various governmental subdivisions and the differences in rules which govern the function of attorneys and other customary participants in real estate transactions, we decided that our earlier decisions regarding reimbursement for representational and advisory legal services should no longer be followed. Therefore, we held in Lay that:

> "* * * necessary and reasonable legal fees and costs customarily charged incident to the purchase or sale of a residence in the locality of the transaction, except fees and costs of litigation, constitute 'similar expenses' within the meaning of the regulations." 56 Comp. Gen. 561, 565.

Thus, we allowed the claim in Lay and in subsequent cases for attorney fees for representational and advisory services, when settlement occurred on or after the date of the Lay decision and when such claims were otherwise proper. See Matter of Myers, B-191745, September 29, 1978. However, Walldorff and other decisions in which settlement preceded the date of the Lay decision (April 27, 1977) were decided in accordance with the earlier decisions, because the holding in Lay was for prospective application only. See Matter of Worochock, B-195462, April 22, 1980.

Since the Lay decision preceded the settlement date of Ms. Hackathorn's real estate transaction, the balance of her claim for attorney fees may be paid, if it is determined that such charges are customarily paid by the purchaser of a residence in the locality involved and if it is determined that the charges were within the customary range of charges for such services in that locality.

Milton J. Socolar

for Comptroller General
of the United States