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DECISION



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

FILE: B-206169

DATE: June 16, 1982

MATTER OF: John O. Randall - Temporary Quarters
Subsistence Expenses

DIGEST: Transferred employee was denied reimbursement for family's temporary quarters subsistence expenses because circumstances of family's return to former residence showed lack of intent to vacate. Employee is entitled to temporary quarters subsistence expenses for himself and his family for period after family rejoined employee since objective evidence shows family's intent to vacate former residence at that time.

The issue to be decided is the entitlement of the employee to reimbursement for temporary quarters subsistence expenses for himself and his family at the employee's new duty station when the employee maintained a residence with most of his furniture at the old duty station. Based on the evidence before us, we hold that the employee is entitled to temporary quarters subsistence expenses at the new duty station since he had vacated his former residence within the meaning of the applicable regulations.

This decision is in response to a request from Mr. H. Stanton Oster, Jr., Director of Finance, Oak Ridge Operations, Department of Energy (DOE), for our opinion concerning the entitlement of Mr. John O. Randall to temporary quarters subsistence expenses under the following circumstances.

On November 30, 1979, Mr. Randall was transferred from Jacksonville, Florida, to Oak Ridge, Tennessee, with a reporting date of December 4, 1979. He traveled to Oak Ridge on December 2 and December 3 and occupied a one-bedroom apartment at his new duty station. Mr. Randall's wife and two daughters joined him at the apartment in Oak Ridge on March 6, 1980, and stayed until April 4, 1980, at which time they returned to their home in Jacksonville. Mr. Randall's claim for temporary quarters subsistence expenses for this

period was denied on the basis that, since his family had returned to Jacksonville, they had not vacated their residence within the meaning of paragraph 2-5.2c of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR).

On July 5, 1980, Mr. Randall's family rejoined him in Oak Ridge. He submitted a second voucher claiming temporary quarters subsistence expenses for the period July 5, 1980, through August 3, 1980, which was also denied. It is that claim which is presently at issue. Mr. Randall obtained an opinion from the Chief Counsel of DOE at Oak Ridge that his claim is allowable, an opinion in which the certifying officer does not concur.

The Federal Travel Regulations, which govern reimbursement of relocation expenses, provide at paragraph 2-5.2c that in order to be eligible for reimbursement of temporary quarters subsistence expenses, the employee and his family must have "vacated the residence quarters in which they were residing at the time the transfer was authorized." There is no definition of the word "vacate" in the travel regulations. However, we generally consider a residence to be vacated when an employee or his family ceases to occupy it for the purposes intended. In determining whether an employee and his family have ceased to occupy a residence we examine their actions prior to or after departure from the former residence. If those actions support an inference that the employee or his family intended to cease occupancy of the residence, we generally have authorized reimbursement. See, for example, Patrick T. Schluck, B-202243, August 14, 1981.

When Mr. Randall's family first joined him in Oak Ridge in March 1980, they brought with them about 1,000 pounds of household goods consisting of a few items of furniture and clothes. There was an offer to purchase their former residence, but the house did not sell at that time. We agree with the certifying officer's determination concerning this period of entitlement for it does not appear that the family vacated their residence in Jacksonville at that time.

With regard to Mr. Randall's second claim for temporary quarters subsistence expenses, we believe there is sufficient

indication that his family intended to vacate their Jacksonville residence in July. The Chief Counsel of DOE at Oak Ridge stated in his opinion that in June 1980, Mr. Randall and his family resolved to consolidate their households and live together in Oak Ridge. When Mr. Randall's family joined him in July they brought along additional furniture, clothes, and kitchen utensils, and, at that time, Mr. Randall put his name on a waiting list for a two-bedroom apartment. The Randalls left a majority of their household goods in the Jacksonville residence because there was insufficient room in the Oak Ridge apartment for them and Mr. Randall thought it would assist the sale of his house if the household goods remained. His younger daughter enrolled in the Oak Ridge school system, and although she returned to Jacksonville in November to finish high school with her friends, she lived there with her grandparents. Mr. Randall states that none of his family returned to live in the Jacksonville residence after July and that the electricity was turned off at that time. Mr. Randall and his family returned to Jacksonville in January 1981, to assist the movers in packing the remainder of the household goods, but they stayed with his wife's parents during that time.

The certifying officer decided that Mr. Randall's family had not vacated their residence as contemplated by the Federal Travel Regulations, basing his decision in large part on the fact that the Randalls left a majority of their household goods in their residence until January. In connection with his determination the certifying officer cited Charles C. Werner, B-185696, May 28, 1976. In that case, the wife of a transferred employee traveled to the new duty station but returned twice to their residence at the old duty station, from which no household goods had been moved. The employee contended that at the time of their initial departure, their intent was to return only to move their household goods, which were already packed, after finding permanent quarters. His wife returned because they were unable to locate permanent quarters or additional suitable temporary quarters. We denied the employee's claim because, although he stated that the availability of temporary quarters was severely limited, we had been given no evidence to indicate that the employee's wife would not have returned to their former residence in any event.

In one of our more recent cases, John M. Mankat, B-195866, April 2, 1980, we also denied reimbursement of temporary quarters for an employee's family where the employee sent them home after 1 week at the new duty station in order to save furniture storage costs and to prevent potential vandalism at his former residence prior to settlement. We held that since the family left a fully furnished residence unsure of when it would be sold or when they could move into a new residence, those facts did not support an inference that the family intended to cease occupancy. Rather, those facts created the inference that the claimant had taken steps to allow his family to continue their occupancy, if necessary.

Although the fact situations of the Werner and Mankat cases parallel the situation when Mr. Randall's family first joined him in March, we believe that the actions taken by Mr. Randall and his family in July are sufficient to show that he did not leave the furniture in his residence so that his family could return. Therefore, we conclude that the Randall family had vacated their former residence in Jacksonville in July 1980, when they rejoined Mr. Randall in Oak Ridge, despite the fact that most of their furniture was left behind.

Accordingly, for the reasons stated above, we hold that Mr. Randall is entitled to be reimbursed for the temporary quarters subsistence expenses incurred by himself and his family during the 30-day period from July 5 through August 3, 1980.

for *William H. ...*
Comptroller General
of the United States