



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: William E. Gray - Temporary Quarters Subsistence
Expenses
File: B-223314
Date: June 30, 1987

DIGEST

An employee was transferred to his temporary duty site and continued to reside in the same housing he had occupied while on temporary duty. He may not be allowed temporary quarters subsistence expenses because, under paragraph 2-5.2c of the Federal Travel Regulations, those expenses are payable only if an employee has vacated the residence he was occupying at the time of his transfer. However, his indebtedness may be considered for waiver.

DECISION

The issue in this decision is whether temporary quarters subsistence expenses may be paid to Mr. William E. Gray, an employee of the Department of Health and Human Services, Social Security Administration (SSA), who was transferred to his temporary duty site and continued to reside in the same housing he had occupied while on temporary duty.^{1/} We hold that Mr. Gray is not entitled to temporary quarters subsistence expenses because he did not vacate the residence he was occupying at the time of his transfer, as required by paragraph 2-5.2c of the Federal Travel Regulations (Supp. 4, August 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR). However, the \$3,429.82 already paid to Mr. Gray may be considered for waiver under 5 U.S.C. § 5584 (1982 & Supp. III 1985).

BACKGROUND

Effective January 7, 1985, Mr. Gray, a Social Insurance Representative Supervisor stationed in Chicago, Illinois,

^{1/} This decision was requested by Mr. Walter W. Pleines, Director of SSA's Division of Finance.

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was assigned to a 4-month detail in Baltimore, Maryland. Mr. Gray's family accompanied him to Baltimore, and they moved into a rented townhouse while still retaining their permanent residence in Chicago.

The SSA originally contemplated that Mr. Gray's detail would end on May 7, 1985, but, through a series of 1 to 3-month extensions, the detail ultimately was continued until February 15, 1986. Effective the next day, February 16, 1986, Mr. Gray received a competitive promotion to a position in the Baltimore office. He was given official notice of his transfer from Chicago to Baltimore on February 21, and, by travel order dated March 6, 1986, he was authorized relocation benefits which included 30 days' temporary quarters subsistence expenses retroactive to February 16.

Several days after receiving his transfer notice, Mr. Gray entered into a contract for the purchase of a permanent residence in Baltimore and began making arrangements to sell his house in Chicago. Mr. Gray and his family continued to occupy the rented townhouse in Baltimore, and he filed a voucher claiming temporary quarters subsistence expenses of \$3,429.82 for their occupancy between February 16 and March 17, 1986. The SSA granted Mr. Gray's request for a second period of temporary quarters subsistence expenses ending on April 16, and, at about the same time that this second period expired, allowed his \$3,429.82 claim for the first 30 days. The SSA then approved a third period of temporary quarters ending on May 16, 1986.

On or about May 5, 1986, SSA advised Mr. Gray that he was ineligible for temporary quarters subsistence expenses because he had not vacated the residence he was occupying at the time of his transfer, as required by FTR paragraph 2-5.2c. Apparently, the agency had discovered our decisions in Frank A. Kraus, B-217297, June 24, 1985, and B-179583, July 31, 1974, in which we held that FTR paragraph 2-5.2c, and its antecedent, prohibited the payment of temporary quarters subsistence expenses to an employee who is transferred to his temporary duty site if he continues to occupy the same housing. On the basis of our decisions in Kraus and B-179583, SSA advised Mr. Gray that he was indebted for the \$3,429.82 previously paid to him and that his claims for the second and third periods of temporary quarters subsistence expenses would not be allowed.

Mr. Gray disagrees with SSA's determination, contending that the cited decisions are not applicable to him. While he does not dispute that the situations of the claimants in the cited decisions are similar to his in material respects--they had been transferred to their temporary duty sites and continued to reside in the same lodgings--he asserts that the decisions are nevertheless distinguishable because the claimants did not have as compelling a need for temporary quarters subsistence expenses. In this regard, Mr. Gray asserts that the claimants in the cited decisions were in a better position to begin making relocation arrangements before actually receiving notice of their transfers to their temporary duty sites because: (1) unlike Mr. Gray, it appears that both claimants knew at the outset that their temporary duty assignments would be prolonged; and (2) it appears that both claimants had applied for lateral transfers, for which "the certainty of change of station is almost assured," in contrast to Mr. Gray's application for a competitive promotion, with respect to which "there are no assurances that a change of station will take place." Mr. Gray adds that, in contrast to his situation, it appears that neither claimant involved in the cited decisions maintained a permanent residence at his old official station.

Mr. Gray has presented a number of additional arguments in support of his claim for temporary quarters subsistence expenses. For example, he argues that the requirement in FTR paragraph 2-5.2c that an employee must vacate his "residence" in order to receive temporary quarters subsistence expenses may be valid with respect to a transferred employee who must move from one location to another and leave his permanent residence at the prior location, but should not apply to an individual who is already occupying temporary lodgings at his new duty station when his transfer there is authorized. He further suggests that the Baltimore townhouse is not the type of "residence" which an employee must vacate under the terms of FTR para. 2-5.2c because it was temporary. According to Mr. Gray, the temporariness of the townhouse is evidenced by several factors: (1) the townhouse and its furnishings were rented; (2) he and his family retained their permanent residence in Chicago while occupying the townhouse; and (3) several days after he received notice of his transfer to Baltimore, he entered into a contract for the purchase of a permanent residence there.

DISCUSSION

The authority for paying a transferred employee's subsistence expenses during the occupancy of temporary quarters is found in 5 U.S.C. § 5724a(a)(3), as implemented by Chapter 2, Part 5 of the FTR. The relevant part of FTR paragraph 2-5.2c states that:

"c. What constitutes temporary quarters.
Generally, the term 'temporary quarters' refers to lodging obtained from private or commercial sources for the purpose of temporary occupancy after vacating the residence occupied when the transfer was authorized. * * *

The above-quoted language requires that an employee must vacate the residence he was occupying at the time his transfer was authorized in order to qualify for temporary quarters subsistence expenses. Applying this requirement, we have consistently held that an employee who is transferred to the location at which he has been performing extended temporary duty may not receive temporary quarters subsistence expenses if, after the date of his transfer, he continues to stay at the same residence he was occupying during the temporary assignment. See Frank A. Kraus, B-217297, June 24, 1985; and B-179583, July 31, 1974, cited by SSA. See also William B. Hendricks, B-199525, May 6, 1981; B-176531, March 12, 1973; and B-168041, November 13, 1969. For example, in B-179583, cited above, we held that temporary quarters subsistence expenses could not be paid to an employee who was transferred to his temporary duty site following an 11-month detail because he and his family continued to reside in the same rented apartment they had been occupying during the detail. In Kraus, above, we disallowed a transferred employee's claim for temporary quarters subsistence expenses associated with his alleged reoccupancy of the same apartment he and his wife had occupied during his temporary duty assignment, finding no evidence that they had ever vacated the apartment.

While Mr. Gray contends that his case is distinguishable from B-179583 and Kraus, above, the distinguishing facts he has mentioned are based largely on conjecture and, in any event, are not material. Mr. Gray, like the claimants involved in B-179583, Kraus, and the other decisions cited above, continued to reside in the housing he had been occupying at the time he was transferred to his temporary duty site,

and this fact alone disqualified him from receiving temporary quarters subsistence expenses under FTR para. 2-5.2c. Furthermore, while Mr. Gray may have viewed the rented townhouse in Baltimore as purely temporary housing, we have held that the "residence" which an employee must vacate under the terms of FTR para. 2-5.2c includes any housing, temporary or permanent, as long as it constitutes the employee's actual place of abode at the time he is transferred rather than mere transient lodgings. See Fred T. Casteel, B-183403, June 20, 1975.

Accordingly, we hold that Mr. Gray is not entitled to receive temporary quarters subsistence expenses associated with his and his family's continued occupancy of the rented townhouse in Baltimore. Since he was already paid \$3,429.82 for the first 30 days of his occupancy, he is indebted to the government for that amount.

However, Mr. Gray's indebtedness can now be considered for waiver under the provisions of 5 U.S.C. § 5584, as recently amended by Public Law No. 99-224, 99 Stat. 1741, December 28, 1985. The amendments to the waiver statutes now authorize waiver of travel, transportation and relocation expenses and allowances. See Circular Letter B-197290, February 24, 1986. Accordingly, Mr. Gray's request for waiver of his indebtedness for temporary quarters subsistence expenses may be forwarded to this Office following the criteria set out at 4 C.F.R. § 92.3(c) and (d) (1986).

Milton J. Auster
for Comptroller General
of the United States