



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: David M. Shannon - Temporary Quarters Subsistence
Expenses - Occupancy of Rental House

File: B-230746

Date: February 17, 1989

DIGEST

A transferred employee was authorized temporary quarters for 60 days, but the agency denied reimbursement based on the employee's occupancy of a rented house, movement of household goods into the house, and the length of time of occupancy (1-1/4 years). We conclude that, at the time he moved into the house, he only intended to occupy it on a temporary basis. He negotiated a month-to-month lease, he stored a large quantity of goods in his garage because the house was too small, and he attempted to obtain adequate permanent quarters but was unable to do so within his means. Under FTR, para. 2-5.2c (Supp. 4, Aug. 23, 1982), he is entitled to reimbursement for temporary quarters subsistence expenses.

DECISION

The question in this case was presented by an authorized certifying officer of the Department of Energy (DOE), Albuquerque Operations Office. He asks whether the claim of Mr. David M. Shannon for reimbursement of \$3,931.13 for 60 days temporary quarters subsistence expenses (TQSE) was properly denied by DOE. We hold that Mr. Shannon is entitled to be reimbursed for the reasons stated below.

BACKGROUND

Incident to his permanent change of station from Oak Ridge, Tennessee, to Albuquerque, New Mexico, in December 1986, Mr. Shannon was authorized TQSE for 60 days and received an advance payment for that purpose. Prior to the move, Mr. Shannon and his wife took an authorized house-hunting trip from November 16-21, 1986. On the last day of this trip, Mr. Shannon rented a three-bedroom house with approximately 1,100 square feet of living space. The lease was on a month-to-month basis. Mr. Shannon and family moved into this house on December 7, 1986, and his household goods

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were delivered to the house on or about the same date. Due to the small size of the house for a family of four, much of Mr. Shannon's personal and household goods could not be moved into the house and were stored in the garage.

Following the authorized 60-day period of temporary quarters, Mr. Shannon and family continued to reside in the rented house and were residing there at the time of the certifying officer's letter to this Office (approximately 1 year and 3 months after occupancy). The agency found that, since Mr. Shannon's intention to buy a residence in Albuquerque was indefinite, his occupancy of the rented house constituted a permanent residence, and therefore, disallowed the claim for temporary quarters expenses.

In opposition to the denial, Mr. Shannon relies on the 1982 amendment to the Federal Travel Regulations which provides that occupancy of temporary quarters which eventually become permanent doesn't preclude payment of temporary quarters expenses if the employee shows satisfactorily that the quarters were intended initially to be only temporary. He maintains that his intention upon moving to Albuquerque was to move into a larger house more adequately suited to his family's needs, but that due to financial and other factors, he has not been able to find more adequate quarters.

As evidence of his intent, Mr. Shannon states that he negotiated a month-to-month lease for the house, and this is verified by a written statement from his landlord. He moved his household goods into the house, but because of its small size a large quantity of the goods had to be stored in the garage area of the house pending occupancy of a permanent and adequate residence. He adds that he and his wife have engaged in ongoing constant efforts to secure a permanent dwelling, but that properties adequate for their needs were above their means. Financial problems arising from the transfer also complicated his efforts. As to the length of occupancy of the rented house, he says that his intent was to occupy it only temporarily and that at the end of 60 days he requested payment of temporary quarters expenses and did not ask for any extension or special treatment.

OPINION

General authority for payment of TQSE is contained in 5 U.S.C. § 5724a(a)(3) (1986). The implementing Federal

Travel Regulations (FTR)^{1/}, in para. 2-5.2c, define "temporary quarters" as:

". . . any lodging obtained from private or commercial sources to be occupied temporarily by the employee or members of his/her immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized."

As amended effective Oct. 1, 1982, FTR, para. 2-5.2c (Supp. 4, Aug. 23, 1982), further states that, when an employee's temporary quarters become permanent quarters, payment of TQSE is not necessarily prevented, but the agency should rely on the employee's initial intent upon moving into the quarters. Factors that the agency should consider in determining the employee's intent are:

". . . the duration of the lease, movement of household effects into the quarters, type of quarters, expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters."

We have consistently held that a determination as to what constitutes temporary quarters is not precisely definable, and such determination must be made on the facts of each case. If, on the basis of consideration of all factors, it is objectively determined that the employee clearly manifested an intent to occupy the quarters on a temporary basis when he moved into the residence, we have allowed payment of TQSE even though the quarters could be occupied permanently or did, in fact, become permanent. See Harrison J. Lane, B-183829, Jan. 2, 1976, and cases cited therein; Robert D. Hawks, B-205057, Feb. 24, 1982.

In fact, the 1982 amendment to FTR, para. 2-5.2c, quoted above, reflects our prior decisions by focusing on the transferred employee's initial intent and listing the primary factors to be considered in making a determination as to allowability.

The first factor is the duration of the lease. Mr. Shannon entered into a month-to-month lease, which supports his position that he intended to occupy the house only temporarily. See Charles J. Wilson, B-187622, June 13, 1977. Also, we recently allowed a claim for temporary quarters

^{1/} GSA Bulletin FPMR A-40, General Supplement 1, September 28, 1981, incorp. by ref., 41 C.F.R. § 101-7.003 (1988).

expenses where the employee had executed a 6-month lease, holding that such a lease is considered short-term and not an indication of intent to begin permanent occupancy. Carl A. Zulick, B-226823, Aug. 22, 1988.

With respect to the movement of household effects into the dwelling, we have held that such action is not, by itself, determinative of whether the quarters were temporary or permanent. See Wilson, supra. Here, Mr. Shannon explains that he moved his personal belongings into the dwelling rather than place them in temporary storage. He states that a large quantity of his household goods were stored in the garage and never unpacked. We conclude that, under the circumstances, the movement of Mr. Shannon's household effects into the residence does not, standing alone, warrant the conclusion that he intended the dwelling to be his permanent residence at the time he initially occupied the dwelling. Zulick, supra.

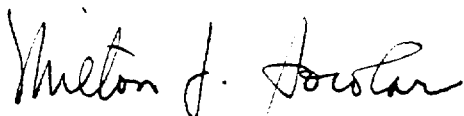
In regard to the type of quarters occupied by Mr. Shannon, a single family dwelling, neither FTR, para. 2-5.2c nor our decisions preclude a detached single family dwelling from constituting temporary quarters.

With respect to expressions of intent by Mr. Shannon in seeking permanent living quarters, he states that he made it clear to his supervisor and his coworkers that the rental house was only temporary and that he intended to purchase a permanent dwelling. He adds that he and his wife have been engaged in a continuing effort to find permanent quarters ever since their arrival in Albuquerque, but have been unable to find adequate quarters within their means.

Although, Mr. Shannon continued to reside in the rented house for 1-1/4 years at the time of the certifying officer's letter to us, we believe the evidence supports a finding that Mr. Shannon has demonstrated his initial intent to occupy the house on a temporary basis. Such a finding is supported by the month-to-month lease arrangement, the storage of goods in the garage pending a permanent move, and the evidence of attempts to secure permanent quarters, despite the lack of success in that regard. See Zulick, supra. See also Robert D. Hawks, supra.

Hence, we conclude that the doubts caused by the length of occupancy of the rented house and the lack of success in securing permanent quarters are overcome by the evidence showing that the occupancy of the rented house was intended to be only temporary. Since the evidence reasonably establishes that, at the time Mr. Shannon first occupied the rented house, he intended to remain there only on a

temporary basis, we hold that the dwelling constituted "temporary quarters" for which Mr. Shannon is entitled to reimbursement of allowable temporary quarters subsistence expenses.

for 
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of the United States