



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Joseph E. Miller - Temporary Quarters
Subsistence Expenses - Permanent Quarters
Unrelated to Transfer - Limitation

File: B-237927

Date: June 1, 1990

DIGEST

A transferred employee's claim for temporary quarters subsistence expense (TQSE) at his new duty station was terminated by his agency because his family moved into permanent quarters elsewhere. The employee may be reimbursed TQSE as a single individual for the period authorized since his dependents' occupancy of quarters away from his duty station was not related to his transfer.

DECISION

This decision is in response to a request from the Finance and Accounting Officer, Letterkenny Army Depot.^{1/} It concerns the issue of whether an employee is entitled to be reimbursed subsistence expenses as a single individual incident to occupancy of temporary quarters at his new duty station where the employee's family chose to occupy temporary and permanent quarters elsewhere. We conclude that the employee may be reimbursed subsistence expenses as a single individual for the following reasons.

BACKGROUND

Mr. Joseph E. Miller, an employee of the United States Army stationed in Germany, was transferred to the Letterkenny Army Depot, Chambersburg, Pennsylvania, on July 25, 1988. For personal reasons, his wife and three minor children performed early return travel from Germany on March 8, 1988, under authority of 5 U.S.C. § 5729 (1988). When they returned, they stayed with Mrs. Miller's parents in Rochester Mills, Pennsylvania. On April 1, 1988,

^{1/} The claim has been assigned Control Number 89-17 by the Per Diem, Travel and Transportation Allowance Committee.

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Mrs. Miller and the children moved to other temporary quarters in Rochester Mills. On September 1, 1988, she moved into permanent quarters in Indiana, Pennsylvania, and on October 12, 1988, filed for divorce from Mr. Miller. Each of these residence quarters occupied by Mrs. Miller and the three children were at least 150 miles from Mr. Miller's new permanent duty station in Chambersburg, Pennsylvania.

Mr. Miller was initially authorized Temporary Quarters Subsistence Expense (TQSE) for himself and dependents, not to exceed 60 days. He was later authorized a 30-day extension.

Mr. Miller claimed subsistence expenses incident to occupancy of temporary quarters for the period July 24 to October 12, 1988, for himself and his dependents. The agency allowed the claim only in part. It disallowed that portion of the claim for the period beginning September 1, 1988, when Mr. Miller's dependents occupied permanent quarters. On appeal, our Claims Group, by Settlement Z-2866216, September 15, 1989, sustained that disallowance.

Mr. Miller has amended his subsistence expense claim. He has eliminated his claim for dependents and claims only for himself for the entire period.

OPINION

Under 5 U.S.C. § 5724a(a)(3) (1988) and implementing regulations contained in chapter 2, part 5 of the Federal Travel Regulations (FTR), as amended by Supp. 10, Nov. 14, 1983,^{2/} an employee is entitled to subsistence expenses in his own right while occupying temporary quarters, and if accompanied by members of his immediate family as defined in FTR, para. 2-1.4d(1), he is entitled to subsistence expenses on their behalf subject to certain conditions and limitations stated elsewhere in chapter 2, part 5 of the FTR.

Paragraph 2-5.2d of the FTR states that as a general rule temporary quarters must be in the vicinity of the old or new official station. That paragraph also provides that temporary quarters will not be allowed at other locations unless they are justified by circumstances unique to the individual employee or family and are reasonably related to and incident to transfer. Further, it provides that such occupancy shall not be approved for reasons unrelated to the transfer.

^{2/} Incorp. by ref., 41 C.F.R. § 101-7.003 (1987).

Thus, for individuals who qualify as members of an employee's immediate family and who qualify for subsistence expenses under FTR, para. 2-5.2d, paragraph 2-5.2f provides in part:

"f. Computation of eligibility period and termination. . . . The period of eligibility shall terminate when . . . any member of the immediate family occupies permanent residence quarters"

The test used to determine whether members of an employee's immediate family qualify for subsistence expense reimbursement is whether there is a direct relationship between occupancy of temporary quarters by such family members, regardless of location, and the employee's transfer. Lawrence R. Sanders, 65 Comp. Gen. 326 (1986). Where that relationship is shown not to exist, the family members so situated do not qualify under the regulations so as to permit subsistence expense reimbursement on their behalf. Harold R. Fine, B-224628, Jan. 12, 1988. See also, 58 Comp. Gen. 606 (1979) and B-171780, Mar. 17, 1971, affirmed on reconsideration, B-171780, June 15, 1971.

We have also held that a separated spouse is not a member of an employee's household and, thus, does not qualify as a member of his immediate family under the regulations. William A. Cromer, B-205869, June 8, 1982, and decisions cited.

Where family members do not qualify for temporary quarters subsistence expense reimbursement, their actions do not limit the period of temporary quarters occupancy by the employee and other qualified members of his immediate family. In the present case, Mrs. Miller, accompanied by their dependent children, did not join Mr. Miller at his new duty station. Instead, she maintained custody of their three children and continued occupying quarters of her choosing, both temporary and permanent, approximately 150 miles from Mr. Miller's new duty station.

In these circumstances, neither she nor their children qualify as members of Mr. Miller's immediate family for purposes of chapter 2, part 5 of the FTR and subsistence expenses on their behalf incident to Mr. Miller's transfer may not be paid.

Therefore, Mr. Miller is to be treated as a single individual and is entitled to subsistence expense reimbursement

while in temporary quarters at his new duty station not to exceed the 90 days authorized.

for Milton J. Rowland
Comptroller General
of the United States