

Office of the General Counsel

B-249028

November 10, 1992

Mr.

Dear Mr. :

This responds to your May 8, 1992, appeal of our Claims Group's settlement 2-2867607, Mar. 5, 1992, which denied reimbursement for temporary quarters subsistence expenses (TQSE) your dependents incurred while visiting you at the new duty station before vacating the residence at the old duty station incident to your transfer.

Your claim was denied because of the general rule that if an employee's dependents continue to occupy the residence at the old duty station as the usual place of abode after the employee travels to the new duty station, that residence has not been "vacated" in order to establish TQSE eligibility for the dependents. You correctly point out that we have recognized an exception to the general rule where the employee can demonstrate that he intended to cease occupancy of that residence but was prevented by unforeseen events beyond his control. However, we have characterized the necessary intent to vacate as a "present intent" which has been frustrated by an immediate event, such as the breakdown or unavailability of a moving van that physically prevents the vacating of the residence from occurring. See , 67 Comp. Gen. 544 (1988). Immediate events, such as the unexpected illness of a child or inclement weather, have not been considered sufficient reasons that would have frustrated a genuine "present intent" to vacate the old residence. See , B-235329, Aug. 25, 1989, , 69 Comp. Gen. 414, 416 (1990).

The reasons you have given for your dependents not being able to vacate the residence at your old duty station do not show a frustration of a genuine "present intent" to vacate the residence. They merely have demonstrated a general intent to vacate the residence at some indefinite future time when permanent quarters became available at the new duty station. The Claims Group's settlement correctly applied the general rule to your case that TQSE is not payable for dependents who have not vacated the residence at

the old duty station when the employee has moved to the new duty station, and upon review of the record, we find no error of law or fact in the Claims Group's settlement. Accordingly, that settlement is affirmed. Copies of the cited decisions are enclosed.

Sincerely yours,

JFH
James F. Hinchman
James F. Hinchman
General Counsel

Enclosures

November 10, 1992

DIGEST

An employee's dependents who continue to occupy the residence at the old duty station as the usual place of abode after the employee travels to the new duty station incident to his transfer are not entitled to temporary quarters subsistence expenses (TQSE) for visits to the new duty station because that residence has not been vacated, which is a requirement for receiving TQSE. Although the employee enumerated immediate events such as bad weather and housing unavailability at the new duty station as preventing the vacating of the old residence and allowing it to be considered as constructively vacated, these events did not demonstrate that the dependents had a "present intent" to vacate the old residence which was frustrated by the events.