



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Julie B. Fagan

File: B-260903

Date: May 29, 1996

DIGEST

Under Federal Travel Regulation § 302.5.2(c) (1995), employee who occupied, on a lease basis, a residence she intended to make her permanent residence upon completing its purchase is not entitled to temporary quarters expenses. Employee's reliance on erroneous advice by an agency official that she would be reimbursed for her occupancy during the lease period and resultant cost savings to the government do not bind the government to pay subsistence expenses for an employee's occupancy of quarters intended to be her permanent residence.

DECISION

The Department of Housing and Urban Development (HUD) requests a decision on whether to reimburse Julie B. Fagan for disallowed temporary quarters expenses in connection with her transfer from Washington, DC, to Hartford, Connecticut.¹

BACKGROUND

Ms. Fagan was transferred from HUD Headquarters in Washington, DC, to Hartford, Connecticut, on October 19, 1994, with a reporting date of December 4, 1994. On November 14, 1994, Ms. Fagan inquired whether it would be possible for her to be reimbursed temporary quarters expenses for her occupancy of a Hartford residence that she hoped to purchase, pending settlement on the residence. She indicated that her lawyer had provided a lease that was separate from any agreement to purchase the residence and that the rental agreement would not be a condition of the purchase contract or mortgage settlement and would end at the closing date. She was erroneously advised by the HUD Administrative Officer, who had conferred with the Travel Policy Office, that she could be reimbursed for her occupancy of the residence as temporary quarters under these conditions.

¹This request was submitted by Mr. William H. Eargle, Jr., Director, Office of Finance and Accounting, U.S. Department of Housing and Urban Development, Washington, DC.

Ms. Fagan was reimbursed \$770 for temporary quarters at a separate location in the Hartford area for the period from November 28 to December 2, 1994. She and her family moved into the residence on December 2. The remainder of her claim, for the period beginning on the date she moved into the residence, was disallowed based on her intent to make the residence permanent. In her request for reconsideration, Ms. Fagan contends that she would not have moved into the residence had she been provided accurate information concerning temporary quarters. She asserts that she should not be penalized for the erroneous information provided by HUD staff and that she would have occupied temporary quarters in a hotel had she been provided accurate information prior to her occupancy of the residence. In addition, Ms. Fagan contends that occupying her residence was cost effective since it enabled her to avoid costs for storing household goods. Moreover, the daily rental rate (\$100) for the residence was lower than the government rate (\$138) charged by the hotel.

ANALYSIS AND CONCLUSION

Under the provisions of 5 U.S.C. § 5724a(a)(3) and the implementing regulations in Chapter 302, Part 5 of the Federal Travel Regulation (FTR),² an employee may be reimbursed for the expenses of the occupancy of temporary quarters in connection with an official transfer to a new duty station. In order to be eligible for temporary quarters subsistence expenses, an employee must occupy temporary quarters. Under § 302-5.2(c) occupancy of temporary quarters that eventually become the employee's permanent residence shall not prevent payment of the temporary quarters allowance, if, in the agency's judgment, the employee shows satisfactorily that the quarters occupied were intended initially to be only temporary.

In determining whether an employee intended to occupy the quarters on a temporary basis, the agency is to consider such factors as the type of quarters, the duration of any lease, movement of household effects into the quarters, efforts to secure a permanent residence at a separate location, expressions of intent, and any other pertinent facts and circumstances surrounding the occupancy. 41 C.F.R. § 302-5.2(c).

The threshold determination as to whether the quarters were initially temporary in nature is based on the intent of the employee at the time he moves into the dwelling. Carl A. Zulick, 67 Comp. Gen. 585 (1988). In James W. Pierce, B-202103, July 16, 1981, we held that where an employee purchased a house which was ready for occupancy and moved in on a rental basis pending purchase settlement, he was not entitled to temporary quarters during the rental period because the record showed that it was the employee's intention at the time he moved into the house to

²41 C.F.R. Chapter 302-5 (1995).

make it his permanent residence. See also, Kent N. Rosenlof, 66 Comp. Gen. 701 (1987), and Stephen A. Webb, B-211004, May 23, 1983.

In the present case, it is not disputed that Ms. Fagan moved her household goods and family into the residence with the intent to occupy it on a permanent basis. The lease was a temporary financial arrangement pending settlement that was in process on the residence. Ms. Fagan was clear in her statements to agency officials she consulted that her intent was to make the residence her permanent place of abode.

Ms. Fagan's reliance on erroneous advice from an agency official does not provide a basis for allowing her claim. Erroneous advice does not bind the government to pay an unauthorized claim. See, John Pradarits, 56 Comp. Gen. 131 (1976). Moreover, cost savings to the government do not serve to transform permanent occupancy of a residence into temporary occupancy. Stephen A. Webb, supra.

Accordingly, under FTR § 302-5.2(c) and our decisions, once Ms. Fagan occupied the residence which she intended to be her permanent quarters, even on a rental basis, her entitlement to temporary quarters expenses terminated. Ms. Fagan's claim may not be paid.

/s/Seymour Efros
for Robert P. Murphy
General Counsel