

B-259271

May 16, 1995

Mr. John F. Best
Chief, Finance and Accounting Division
Directorate of Resource Management
U.S. Army Corps of Engineers
Washington, DC 20314-1000

Dear Mr. Best:

This responds to your letter of October 28, 1994, requesting a decision on Mr. James O. Bolden's claim for the lodgings portion of his spouse's temporary quarters subsistence expense (TQSE) from September 26 through October 22, 1991, incident to his relocation from New York, New York, to New Orleans, Louisiana. We agree with the finance and accounting officer's disallowance of the claim.

Mr. Bolden's residence at his old duty station was a leased apartment in New York. As the result of his transfer, he assigned this lease to a friend on September 16, 1991, which was the original reporting date to his new duty station on his travel orders, but he also obtained an agreement from his friend that his spouse could remain in the apartment from September 26 through October 22, 1991. Mr. Bolden paid \$28.70 per day for this arrangement, totaling \$774.90, which is the amount of his claim. Mr. Bolden's travel orders were amended to allow a reporting date to his new duty station of September 27, and Mr. Bolden indicates that he and his son had left the apartment and all his household goods were en route to New Orleans by September 26. Although it is not clear what happened with the apartment from September 16, the lease-assignment date, to September 26, when Mr. Bolden's spouse began paying for the use of the apartment, we believe it is clear that she had not vacated the apartment.

Under the Federal Travel Regulation, § 302-5.2(c), "temporary quarters" for the purpose of TQSE is stated to mean lodging obtained from private or commercial sources for the purpose of temporary occupancy "after vacating the residence occupied when the transfer was authorized." The finance and accounting officer disallowed the claim because Mr. Bolden's spouse had not vacated the residence for the period in question.

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We recognize that Mr. Bolden argues that he planned the arrangements for his spouse to remain in his residence at the old duty station because he knew that she would not be able to join him at the new duty station until after he had reported for duty there, and remaining in the residence was more economical than moving to a hotel.¹ However, as the district counsel pointed out in his memorandum of March 1, 1994, included with your submission, we have held in similar circumstances that under the applicable regulations, an employee is not eligible for TQSE on behalf of a dependent until the dependent vacates the old residence. See Loretta M. Carter, B-229403, Aug. 8, 1988; Patsy S. Ricard, 67 Comp. Gen. 285 (1988); and Edward Carlin, 67 Comp. Gen. 544 (1988).

Although Mr. Bolden also argues that he falls within an exception to the rule of having to vacate the residence, this limited exception applies only where it is demonstrated that the individual had a present intent to vacate the residence but was unable to do so because of unanticipated events beyond his or her control. Drew A. Perry, B-235329, Aug. 25, 1989. There were no such unanticipated events in this case. Also, the list of factors Mr. Bolden supplied in his memorandum of August 15, 1994, used in determining whether quarters are temporary or permanent, only apply to quarters occupied after the residence has been vacated. Thus, those factors are not germane in Mr. Bolden's case.

Accordingly, Mr. Bolden's claim for the lodgings portion of his spouse's TQSE may not be allowed. The cited decisions are enclosed.

Sincerely yours,

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

Enclosures

¹Mr. Bolden's travel orders authorized delayed travel for his spouse.