



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Charles I. Ahn

File: B-252602

Date: August 16, 1993

DIGEST

Transferred employee is not entitled to reimbursement of temporary quarters subsistence expenses after making a downpayment on the purchase of and moving his family and household goods into a house he rented which he later purchased. These facts support the agency's determination that the house became his permanent residence, even though its purchase was contingent upon obtaining funds from the sale of his residence at his old duty station.

DECISION

This decision is in response to a request from a certifying officer of the Food and Drug Administration (FDA), Department of Health and Human Services, that we consider an employee's appeal from the FDA's disallowance of his claim for reimbursement of temporary quarters subsistence expenses (TQSE) for 30 days in August 1992 during which he was living in a house he eventually purchased.¹

The employee, Mr. Charles I. Ahn transferred from Hicksville, New York, to Rockville, Maryland, in May 1992. He was authorized TQSE for 60 days with an extension for another 60 days covering the period from May 3 through August 30, 1992. For the first 60 days, he lived alone in an apartment in Gaithersburg, Maryland, and then moved to a house in Silver Spring, Maryland. His family joined him at the Silver Spring residence near the end of June.

Mr. Ahn states that he experienced difficulties in selling his former residence in New York and was not able to complete the sale of it until September 1992. He paid a monthly rent on the Silver Spring house and he states, upon the insistence of the landlady who was anxious to sell the property, on July 1, 1992, made a downpayment of \$5,000 on the purchase of the property to demonstrate his good faith commitment to purchase it. Mr. Ahn had his furniture

¹The matter was submitted by Mr. David R. Petak, Chief, Accounting Branch, FDA.

removed from storage and moved into the house on July 23, 1992. He states that his furniture was placed in the basement and he unpacked only small necessary items such as dishes, utensils, electronic equipment, computers, etc. since the landlady's furniture was still in the house.

Based on these facts, the agency determined that by the end of July, Mr. Ahn had demonstrated a clear intent to purchase the property in which he was living and, therefore, it could no longer be considered temporary quarters. On this basis the agency denied his claim for TQSE for the last 30 days, August 1-30.

Mr. Ahn does not deny his "desire" to purchase the Silver Spring property, provided he could sell his old residence in New York. However, he contends that although he had the desire to purchase the house, this did not automatically translate into the "intent" to purchase it. Mr. Ahn therefore argues that his remaining in the house and continuing to pay rent until he was able to obtain a definite commitment to sell his New York residence, constituted continued occupancy on a temporary basis during August, for which he is entitled to be reimbursed.

The payment of TQSE is governed by the provisions of 5 U.S.C. § 5724a(a)(3) (1988) and the implementing regulations contained in the Federal Travel Regulation (FTR), Part 302-5 (1992). Section 302-5.2(c) of the FTR provides that the term "temporary quarters" refers to lodging obtained from private or commercial sources for the purpose of "temporary occupancy" after vacating the residence occupied when the transfer was authorized. The regulation further provides that occupancy of temporary quarters that eventually become the employee's permanent residence does not prevent payment of TQSE if, in the agency's judgment, the employee shows satisfactorily that the quarters were intended initially to be only temporary. In making this determination, the regulation states, the agency should consider such factors as the duration of the lease, the movement of household effects into the quarters, the type of quarters, expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters.

The agency in this case appears to have considered the factors described in the regulations in relation to the facts discussed above and made an appropriate determination. As to Mr. Ahn's argument that his desire to purchase did not become an intent to purchase until he was able to sell his New York house, in prior decisions concerning similar circumstances, we have considered the occupancy of the quarters as having become permanent, notwithstanding the fact that the employee's purchase was delayed due to

difficulty in selling a prior residence or obtaining purchase money.²

Therefore, we find no basis to disturb the agency's determination that Mr. Ahn was occupying permanent quarters during the period in question. Accordingly, his claim for TQSE for this period, August 1 through August 30, 1992, may not be allowed.



Seymour Efron

James F. Hinchman
General Counsel

²See Edwin Bosaw, B-201861, Apr. 1, 1981; Douglas D. Mason, B-196284, Aug. 14, 1980; and B-171046, Nov. 23, 1970.