



Comptroller General  
of the United States  
Washington, D.C. 20548

154549

## Decision

**Matter of:** David A. Norgaard

**File:** B-257531

**Date:** June 13, 1995

### DIGEST

A transferred employee rented an apartment at his new duty station but waited over 2 years until his family joined him before claiming temporary quarters subsistence expenses as permitted by 41 C.F.R. § 302-5.2(e) (1994). The arrangement qualifies as occupancy on a temporary basis. He rented a one-bedroom apartment on a month-to-month lease, initially pending his son's graduation at which time his family was planning to move to the new duty station. Although the family's move was delayed, the one-bedroom apartment would not have accommodated his family of four on a long-term basis; he purchased a residence at the new duty station soon after the sale of his residence at his old duty station; and his household goods were not moved into the apartment. These factors indicate that the intent of the employee was to make temporary use of the quarters. Under these circumstances, we conclude that the payment of temporary quarters expenses is proper.

### DECISION

This decision is in response to a request by an authorized certifying officer of the Bonneville Power Administration (BPA), Department of Energy,<sup>1</sup> for an advance decision as to the propriety of paying temporary quarters subsistence expenses to David A. Norgaard, an employee of BPA, for the period March 1 through May 21, 1993, incident to a permanent change of official station. Mr. Norgaard, a lineman working at BPA's Snohomish Substation in Snohomish, Washington, was selected for a Foreman I position at the Covington Substation in Kent, Washington. For the reasons stated later in this decision, we hold that the reimbursement of temporary quarters subsistence expenses to Mr. Norgaard is proper and in accordance with the applicable law and regulations.

<sup>1</sup>Michael P. Adams, Portland, Oregon, reference: DSDT.

## BACKGROUND

With issuance of his travel authorization dated May 25, 1990, Mr. Norgaard was authorized moving expenses, to be paid by the government, and was given a duty reporting date of May 21, 1990. His travel authorization stated that he would be commuting for approximately 1 year and would be moving his family at that time. The distance between Snohomish, Washington, and Kent, Washington, is 50 miles.

He reported for duty at the new station on May 21, 1990. As shown on his travel orders, it was his intention that neither he nor his family (wife and two sons) would relocate to the new duty station until after his oldest son had graduated from high school in June 1991. He planned to commute to work each day. The travel orders authorized temporary quarters not to exceed 30 days after this delay, and he was given a travel advance for these 30 days.

However, in November of 1990, because of requirements to be closer to his job, he started staying at a motel in Auburn, Washington. On February 1, 1991, he moved into a one-bedroom apartment at the new duty station that he rented on a month-to-month lease. After his son graduated from high school in June 1991, his family didn't relocate to the new duty station due to difficulties in selling their house. In December of 1991, at Mr. Norgaard's request, the 2-year period permitted for the sale and purchase of a residence was extended for an additional year to May 21, 1993. See 41 C.F.R. § 302-6.1(e) (1994). On February 15, 1993, closing was completed for the sale of the house at his former duty station. On March 1, 1993, after vacating the old residence, his family joined him at his apartment at the new duty station and he began his 30-day temporary quarters period.

On March 26, 1993, he entered into an agreement to purchase a house in Kent, Washington. In April 1993, he requested and was authorized an additional 60 days of temporary quarters occupancy due to delays in closing on the house he was purchasing. Closing on the house was completed on May 12, 1993. On June 1, 1993, he and his family moved into the house, and he also had his household goods delivered from storage to the house.

When he submitted his travel voucher for the period March 1 through May 21, 1993 (the final day of the 3-year period from the date he reported at his new duty station), he was allowed reimbursement for his meals and incidental expenses only. He was not allowed reimbursement for lodging expenses as he had not included a copy of the rental agreement for the apartment that he and his family had occupied. When he submitted a copy of the lease agreement, the BPA determined that entitlement did not exist for allowance of temporary quarters as the lease showed the apartment rental was not temporary in nature as he had already occupied the apartment for over 2 years prior to his family joining him.

Mr. Norgaard is now reclaiming his lodging expenses from March 1 through May 21, 1993.

#### ANALYSIS AND CONCLUSION

Under the provisions of 5 U.S.C. §§ 5724(a) and 5724a(a)(3) (1994) and the implementing regulations in Chapter 302, Part 5, of the Federal Travel Regulation (FTR) (1994)<sup>2</sup> an employee and his immediate family may be reimbursed for the expenses of the occupancy of temporary quarters in connection with an official transfer to a new duty station.

Under FTR § 302-5.2(c) (1994) "temporary quarters" are defined as any lodgings obtained from private or commercial sources for the purpose of temporary occupancy by the employee or members of his immediate family who have vacated the residence occupied at the time the transfer was authorized. What constitutes temporary quarters "is not susceptible of any precise definition, and such a determination must be based upon the facts and circumstances involved in each case." Carl A. Zulick, 67 Comp. Gen. 585 (1988). The threshold determination of whether quarters are in fact "temporary" within the meaning of the regulation is based on the intent of the employee at the time he moves into the quarters. Michael P. Callahan, B-246479, June 9, 1992.

In determining whether the intent of the employee was to occupy the quarters on a permanent or temporary basis, we have considered such factors as the type of quarters, the duration of a lease, the movement of household effects into the quarters, efforts to secure a permanent residence, expressions of intent, and any other pertinent facts and circumstances surrounding the occupancy. If on the basis of these considerations it is objectively determined that, at the time the employee moved into the residence, he clearly manifested the intent to occupy the quarters only on a temporary basis, we have allowed payment of temporary quarters expenses, even though the quarters could be occupied permanently or did, in fact, become permanent. See Robert D. Hawks, B-205057, Feb. 24, 1982.

Under FTR section 302-5.2(e), an employee may begin temporary quarters eligibility either within 30 days after reporting for duty at his/her new official station or not later than 30 days from the date the family vacates the residence at the old official station, but not beyond the maximum time for beginning allowable travel and transportation. See FTR § 302-1.6.

As indicated above, Mr. Norgaard chose the latter alternative and waited until his family vacated their old residence before beginning his eligibility period. He satisfied the time

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<sup>2</sup>41 C.F.R. Chapter 302-5 (1994). References to the FTR are to the 1994 edition of the Code of Federal Regulations.

limitation because the agency had granted him a 1-year extension of the 2-year time limit to complete his travel, transportation, and residence transactions incident to his transfer.

We think that it is clear that Mr. Norgaard's initial intent when he rented the apartment at his new duty station was to occupy it only temporarily until after his son graduated from high school the following year. In 47 Comp. Gen. 84 (1967), we held that an employee's intent to remain in an apartment until the end of his children's school session showed that his stay in the apartment was intended to be temporary and that he was occupying temporary quarters during that period. We reach the same conclusion here, even though the period of time was longer than the 4-month period in the 1967 decision. Our conclusion is not changed by the additional delay in the family's move after his son's graduation because the nature of Mr. Norgaard's occupancy of the apartment remained temporary.

Moreover, we have held that an employee's occupancy of a one-bedroom condominium was temporary because the unit clearly could not accommodate the employee's family of six persons. Allan L. Franklin, B-222136, Sept. 19, 1986. By the same token, Mr. Norgaard's one-bedroom apartment could not accommodate his family of four for any length of time.

Given these circumstances, we hold that Mr. Norgaard has provided sufficient evidence of his intent that the occupancy of the Kent apartment was temporary in nature. For that reason, the reimbursement he received for meals and incidental expenses was proper and he may be reimbursed his lodging expenses for the time claimed.

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