

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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June 24, 2002

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GSBCA 15715-RELO

In the Matter of CRAIG W. SHERMAN

Craig W. Sherman, Pensacola, FL, Claimant.

Judy Hughes, Travel Pay Services, Systems and Procedures, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

**WILLIAMS**, Board Judge.

The agency properly denied reimbursement of temporary quarters subsistence expenses (TQSE) for claimant's wife and children because he and his wife were separated and his wife and children moved to a different location at the time claimant reported for duty at his new duty station.

Background

In June 2001, Craig W. Sherman, a general engineer with the Department of the Navy, was transferred from the Naval Station at Guantanamo Bay, Cuba, to the Naval Air Station in Pensacola, Florida. He was authorized TQSE for himself, his spouse, and three children.

Claimant and his wife decided that they would no longer reside together upon their return to the continental United States, and his wife chose to reside in Tampa when claimant moved to Pensacola. During that time, it was claimant's hope that his wife would change her mind and move to Pensacola, but she did not do so. In an e-mail message dated March 22, 2001, an employee in the agency's human resources office (HRO) advised Mr. Sherman: "I also requested TQSE/miscellaneous expense accounting information. We did find where you are authorized the TQSE/mis expense even if your family goes to an alternate location. (sic)" Claimant understood this to mean that his wife and children would receive TQSE. However, he later learned that the HRO employee who gave him this advice did not intend "authorized" to mean "entitled" but simply intended to suggest that he needed to request approval in order to have payment authorized.

Discussion

Under the Federal Travel Regulation (FTR), a transferred employee is entitled to reimbursement of subsistence expenses for himself and members of his immediate family while occupying temporary quarters. 41 CFR 302-5.2 (2000). The term "immediate family" is defined as:

- (1) Any of the following named members of the employee's household at the time he/she reports for duty at the new permanent duty station . . . :
  - (i) Spouse
  - (ii) Children of the employee . . . .

41 CFR 302-1.4(f)(i), (ii). The Comptroller General interpreted an earlier version of this provision to mean that a separated spouse is not a member of an employee's household and, thus, does not qualify as a member of his immediate family under the regulation. Joseph E. Miller, 69 Comp. Gen. 493 (1990); William A. Cromer, B-205869 (June 8, 1982); accord Russell Strach, GSBCA 13675-RELO, 97-1 BCA ¶ 28,695 (relocation benefits were not available to employee's wife because employee and wife were not married until after employee reported for duty at new duty station).

As we recognized in Larry J. Burris, GSBCA 13676-RELO, 97-1 BCA ¶ 28,923, the Comptroller General also held that, for purposes of this provision, minor children in the legal custody of an employee's ex-spouse who did not reside with the employee at the time he reported for duty at the new duty station were not "members of the employee's household" and, thus, did not qualify as "immediate family" eligible for reimbursement of subsistence expenses. Paul M. Koloc, B-177701 (Apr. 18, 1973); 44 Comp. Gen. 443 (1965). We adopted the Comptroller General's rulings interpreting the definition of "immediate family" in Burris and continue to follow them here. Accord Cirila R. Martin, GSBCA 15544-TRAV, 02-1 BCA ¶ 31,750 (adopted children not residing with claimant at the time of claimant's renewal agreement travel not entitled to benefits, since they were not yet members of her household). Since claimant was separated from his spouse and children at the time he reported to his new duty station, claimant is not entitled to TQSE for his wife and children.

The fact that claimant believed that HRO advised him that he was entitled to this TQSE does not change this result. Erroneous advice does not create an entitlement where none exists. Aman B. Kay, GSBCA 15543-RELO, 01-2 BCA ¶ 31,508; Barbara A. Caviness, GSBCA 15390-RELO, 01-2 BCA ¶ 31,498.

#### Decision

The claim is denied.

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MARY ELLEN COSTER WILLIAMS  
Board Judge