

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 17, 2000

GSBCA 15243-RELO

In the Matter of ROBERTA A. MOLTZEN

Roberta A. Moltzen, Fairfield, CA, Claimant.

Vincette L. Goerl, Deputy Chief, Office of Finance, Forest Service, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

WILLIAMS, Board Judge.

Claimant, Roberta A. Moltzen, an employee of the Forest Service, United States Department of Agriculture, seeks an additional thirty days of temporary quarters subsistence expenses (TQSE) in conjunction with her permanent change of station (PCS). Claimant was transferred to San Francisco but learned that the regional office to which she had been transferred was itself moving to Mare Island, thirty-six miles from the San Francisco regional office. Claimant was originally told that the move to Mare Island would occur in December 1998; however, that move was delayed until February 1999. Based on the original estimated move date, claimant elected to use relocation services and stay in temporary quarters in San Francisco.

Claimant contends that she should be granted an extension of TQSE due to the agency's delay in moving -- which caused her to extend her stay in temporary quarters. Claimant further suggests that the relocation to Mare Island could be deemed an additional PCS move entitling her to more benefits, so her decision to stay in temporary quarters saved the Government money. The agency concluded that claimant's desire to stay in San Francisco in temporary quarters was personal and determined that there was no compelling reason to extend TQSE. We see no reason to disturb the agency's exercise of its discretion, and therefore deny the claim.

Background

Claimant was permanently reassigned from Portland, Oregon, to San Francisco, California, with a reporting date of November 15, 1998. Claimant elected and was authorized relocation services on September 18, 1998. Under Agriculture Travel Regulation

(ATR) 302-5.2, TQSE is limited to thirty days for employees who elect relocation services. Through an administrative error, claimant was authorized and received sixty days of TQSE.

Prior to reporting to her new duty station, claimant was informed that the San Francisco office would move thirty-six miles to Mare Island, California, in mid-December 1998. According to a memorandum from the Assistant Regional Forester dated November 17, 1998, the effective date of this move was to be no later than February 15, 1999. Since her reporting date was not until mid-November, she believed that she would not need more than thirty days of temporary quarters and chose to use the relocation services. The move to Mare Island occurred on February 15, 1999.

Claimant closed on the sale of her residence in Oregon on November 3, 1998, and closed on her purchase of her new residence near Mare Island on March 3, 1999. Claimant says that if she had been given more accurate information and had known that the office would not be moving until mid-February, she would not have chosen to use the relocation contractor. Claimant decided not to permanently move to Mare Island herself until the office actually moved. She explained:

I was not going to believe in any more "forecasts" and waited until the office had really moved before scheduling the closing date for my new house. I was actually in temporary quarters for four months. I have been reimbursed for the first 60 days and am requesting another 30 days. I am not requesting the last 30 days, since that choice to be in temporary quarters was based on my learning to be skeptical of moving date estimates, not on incorrect information from Forest Service officials.

The agency denied the extension of TQSE, finding that claimant's desire to live near the office in temporary quarters prior to the move to Mare Island was not a compelling reason to extend these benefits.

Discussion

Statute prescribes that when an agency transfers an employee from one permanent duty station to another in the interest of the Government, the agency may pay the employee subsistence expenses for a period of up to sixty days. 5 U.S.C. § 5724a(c)(1) (Supp. IV 1998). The sixty-day period "may be extended for up to an additional 60 days if the head of the agency concerned or the designee of such head of the agency determines that there are compelling reasons for the continued occupancy of temporary quarters." Id. § 5724a(c)(2).

The regulation which implements this statute, the Federal Travel Regulation (FTR), explains that "[a] 'compelling reason' is an event that is beyond [the employee's] control and is acceptable to [his] agency." 41 CFR 302-5.105 (1998). The FTR gives four examples of events which may be acceptable to an agency as compelling reasons for extending the TQSE period, including delayed delivery of an employee's household goods due to strikes, weather, or similar events; unanticipated problems such as a delay in settlement; an inability to find housing that is adequate for the employee's family's needs; or sudden illness, injury, or death of the employee or an immediate family member. 41 CFR 302-5.105. We have characterized these examples as "involv[ing] events over which the employee had no say, and which either were catastrophic or essentially affected the physical availability of permanent housing at the new [permanent duty station]." Baron L. Hudson, GSBCA 14284-RELO, 98-1

BCA ¶ 29,527. Here, the decision to remain in temporary quarters was claimant's choice, and there was no catastrophic event which affected the availability of suitable housing at the new duty station. The information the agency provided to the employee in the memorandum of November 17, 1998, in advance of her move about its office's relocation to Mare Island was accurate. The conditions of the transfer were no different from what was anticipated.

Because statute and regulation make the grant of additional time in which an employee may receive TQSE contingent on the existence of "compelling reasons" for the continued occupancy of temporary quarters, and afford an agency broad discretion in deciding whether such reasons are present, we will not overturn an agency's determination as to an extension of the period unless we find it to have been arbitrary, capricious, or contrary to law. Ralph M. Martinez, GSBCA 14654-RELO, 98-2 BCA ¶ 30,105; Audrey J. Shegog, GSBCA 14621-RELO, 98-2 BCA ¶ 30,049; Rifat A. Ajiuri, GSBCA 14506-RELO, 98-2 BCA ¶ 29,788; Daniel A. Rishe, GSBCA 14444-RELO, 98-1 BCA ¶ 29,677. There is no basis to overturn the agency's decision here.

Decision

The claim is denied.

MARY ELLEN COSTER WILLIAMS
Board Judge