

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

June 26, 2001

GSBCA 15455-RELO

In the Matter of JOHN E. JONEIKIS

John E. Joneikis, Middleburg, FL, Claimant.

G. J. Murphy, Disbursing Officer, Personnel Support Activity, Navy Public Works Center Jacksonville, Jacksonville, FL, appearing for Department of the Navy.

HYATT, Board Judge.

Claimant, John E. Joneikis, transferred from the Naval Public Works Center at the Great Lakes Naval Base in Illinois to the Navy Public Works Center in Jacksonville, Florida. He was notified of his impending transfer on November 24, 1997. He reported to Jacksonville on January 5, 1998. His permanent change of station (PCS) orders authorized sixty days of temporary quarters subsistence expenses (TQSE) for himself and his family. Claimant and his family commenced occupancy of temporary quarters on February 8, 1998.

Mr. Joneikis reported to the Public Works Center to assume the responsibilities of Transportation Manager, a position with duties substantially different from those he had performed in previous positions with the Navy. He was consequently required to spend long hours in the new job, which severely curtailed his search for suitable permanent housing at the new duty station. On February 1, 1998, claimant signed a ninety-day lease for an apartment because it offered a considerable cost savings over a motel suite. Mr. Joneikis states that he was unable to locate any suitable existing housing; on March 16, claimant signed an agreement for the construction of a new home. Although the new house was supposed to be constructed in seventy-five days, for various reasons, including labor shortages and delays in issuance of construction permits, it was not ready for permanent occupancy until July 28, 1998.

On March 23, 1998, claimant requested an additional sixty days of TQSE, which was approved by the commanding officer at the Public Works Center in Jacksonville. His travel orders were modified to reflect the additional sixty days of TQSE. After he received payment for the additional sixty days of TQSE, Mr. Joneikis submitted his relocation claim

in November 1999. The disbursing officer questioned whether claimant was entitled to the additional sixty day extension, noting his understanding that construction delays have not, in the past, generally been considered to provide a valid basis for such an extension. Mr. Joneikis has appealed the disallowance of the additional sixty days of TQSE. His command supports his position, noting that his request for an extension was approved by the command and that funds are available to pay for additional TQSE. Mr. Joneikis also requests that in the event the extension was improperly authorized, his indebtedness be waived.

Discussion

Employees who are "transferred in the interest of the Government from one official station or agency to another for permanent duty" may be reimbursed for certain expenses incident to the transfer. These expenses include "[s]ubsistence expenses of the employee and his immediate family for a period of sixty days while occupying temporary quarters when the new official station is located within the United States." Reimbursement of TQSE may be extended for an additional sixty days if the head of the agency concerned, or his designee, determines that there are compelling reasons for the continued occupancy of temporary quarters. 5 U.S.C. § 5724a(c)(1), (2) (Supp. IV 1998). This statutory provision is implemented by provisions of the Federal Travel Regulation (FTR), and by the Joint Travel Regulations (JTR), which apply to civilian employees of the Department of Defense. Both the FTR and the JTR explain that a "compelling reason" is an event that is beyond the relocating employee's control and is acceptable to the agency. Examples include, but are not limited to, situations in which the employee cannot occupy the new permanent residence because of unanticipated problems such as a delay in settlement on the new residence or a short-term delay in construction of the residence, or the employee is unable to locate a permanent residence which is adequate for the family's needs because of housing conditions at the new official station. 41 CFR 302-5.105 (1998); JTR C13115-B.1.

The disbursing officer's concerns are based on previous decisions in which both the Board and its predecessor, the General Accounting Office (GAO), have generally upheld agency decisions denying extensions of TQSE. These decisions recognize that the authorizing official has considerable and broad discretion to determine what constitutes a "compelling reason" to support an extension, whether those conditions are present, and whether to extend TQSE benefits for periods beyond the initial sixty days. The Board 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. See, e.g., Victoria E. Caldwell, GSBCA 14666-RELO, 99-1 BCA ¶ 30,364; Ralph M. Martinez, GSBCA 14654-RELO, 98-2 BCA ¶ 30,105; Roland J. Landis, GSBCA 13690-RELO, 97-2 BCA ¶ 29,157.

There are quite a few cases reflecting agency determinations that construction delays arising during initial occupancy of TQSE, in connection with a decision to purchase a newly constructed house that will not be ready for occupancy by the time the initial TQSE period expires, do not constitute a compelling circumstance justifying approval of additional TQSE. E.g., Clifford E. Peterson, GSBCA 15112-RELO, 00-1 BCA ¶ 30,812; Marjorie A. Ahlquist, GSBCA 14587-RELO, 98-2 BCA ¶ 29,920. Under the regulations in effect at the time these cases were decided, however, the compelling reason justifying the extension had to relate to events arising during the initial period of TQSE. This requirement has subsequently been

deleted from the regulations. The FTR was amended in March 1997; the corollary revision to the JTR took effect on December 17, 1997.

In one recent case, the Board addressed a situation in which the authorizing official had approved an extension and subsequently been overruled by the disbursing official. In that case, the authorizing official approved an extension of TQSE for an employee who asked for the extension because construction times for new homes at the new duty station exceeded five months and he had been unable to sell his house at the old duty station. He was required to satisfy the old mortgage to qualify for a new one for either construction or purchase of an existing home. The disbursing officer questioned the legality of the extension and the matter was presented to the Board for review. The Board found that the official could not approve an extension of TQSE because the regulation at the time the request was approved contained a requirement that the compelling reason for extending TQSE must have arisen from circumstances occurring during the initial sixty days of TQSE. Arnot Berresford, GSBCA 15054-RELO, 00-1 BCA ¶ 30,647 (1999). In Berresford, however, the Board also recognized that under the revised regulation, which eliminated the requirement that the compelling reason arise during the initial TQSE period, the commanding officer would have had the discretion to approve the request. His decision at the time it was made, however, was contrary to law.

Although Berresford is similar to this case, we think that the two sets of circumstances are nonetheless distinguishable. Since Mr. Joneikis reported to his new position after December 17, 1997, the revised regulation would apply. On the facts available to us, however, Mr. Joneikis apparently did not have an opportunity to take a house hunting trip, and was not able to commence his search for appropriate permanent housing prior to the commencement of TQSE. During the initial sixty day period, claimant determined that adequate existing housing was not available at the new duty station and entered into the agreement to have a house constructed. The authorizing official accepted his explanation. Nothing in the record suggests he should not have. We thus have no reason to conclude that the official's decision was arbitrary, capricious, or contrary to law. As such, the extension of TQSE was properly granted and claimant is entitled to be paid.

CATHERINE B. HYATT
Board Judge