

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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March 26, 2002

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GSBCA 15670-RELO

In the Matter of PAULA K. FOWLER

Paula K. Fowler, Lake Havasu City, AZ, Claimant.

Rodney McVey, Acting Superintendent, Bureau of Indian Affairs, Colorado River Agency, Department of the Interior, Parker, AZ, appearing for Department of Interior.

NEILL, Board Judge.

Claimant, Ms. Paula K. Fowler, an employee of the Department of Interior, asks that we review her agency's denial of her requests for an extension of certain relocation benefits authorized in conjunction with her permanent change of station (PCS) from Newberg, Oregon, to Parker, Arizona. On review of the record before us, we conclude that the agency has acted reasonably and within the limits of its discretion under applicable regulation. We, therefore, affirm the determination and deny Ms. Fowler's claim.

## Background

By letter dated May 14, 1999, claimant was advised that her transfer to the Colorado River Agency of the Bureau of Indian Affairs in Parker, Arizona was confirmed and that the costs of her travel and relocation to her new permanent duty station (PDS) would be paid by the Bureau.

On June 8, 1999, the claimant was authorized to make her PCS move. Her travel authorization indicated, among other things, that temporary quarters subsistence expenses (TQSE) and costs associated with the shipment of her household goods would be paid.

The agency states that, when Ms. Fowler was preparing to move to her new PDS, she was offered the option of occupying Government-owned quarters but declined, saying that it was her intention instead to use her motor home until she had secured permanent quarters in lieu of the available Government housing. In view of this expressed preference to live in temporary quarters, the agency authorized an initial thirty days for TQSE but with the expectation that, within that period, Ms. Fowler would arrange for permanent quarters. This, however, did not occur. Instead, the agency, at a later date, granted Ms. Fowler a thirty-day

extension of authorized TQSE, thus bringing to sixty the total number days for which TQSE reimbursement was authorized.

The claimant explains that on September 9, 1999, a personnel specialist in the Bureau's area office in Phoenix contacted her by phone to discuss the status of her authorization for TQSE reimbursement and temporary storage of her household goods. The personnel specialist allegedly explained to Ms. Fowler that the authorized temporary storage of household goods for ninety days was due to expire and that a request to extend this period as well as the sixty-day period already authorized for TQSE reimbursement should be submitted. By memorandum of the same date, Ms. Fowler submitted a request to the local agency superintendent that her TQSE authorization be increased by an additional thirty days, to a total of ninety days, and that her authorized ninety days for temporary storage of household goods be increased by an additional thirty days or by the number of days leading to her move-in date – whichever should be less. She explained that these extensions were necessary in order to complete negotiations on the purchase price of her home and to cover "any unanticipated problems, such as a delay in settlement of the new residence which may hinder occupying the residence in a timely manner."

By memorandum dated September 14, 1999, the local agency superintendent advised Ms. Fowler that he did not support her request for an extension of authorized TQSE reimbursement. He explained that, in view of her failure to secure permanent quarters during the first thirty days of authorized TQSE reimbursement and the continued availability of Government-owned housing, he no longer believed that any additional allowance would be appropriate since this would not be in the Government's best interest.

Upon receiving this rejection of her requests, Ms. Fowler contacted the personnel specialist in the Phoenix office with whom she had spoken earlier. Ms. Fowler states that the specialist advised her that a request for an extension of reimbursement for TQSE should have been submitted to the director of personnel in the Bureau's Phoenix office and not to the local agency superintendent. As to the request for extension of the ninety-day period for temporary storage, Ms. Fowler states that the personnel specialist advised her that this request should have been sent to the Office of Surface Mining.

Acting upon the advice allegedly provided to her by the personnel specialist in the Bureau's Phoenix office, Ms. Fowler sent renewed requests to the two offices identified to her. The request regarding TQSE was eventually returned to her, apparently through the local agency superintendent, with the note: "Original position of Sept. 14 has not changed." The request regarding temporary storage of household goods was also returned without approval since it lacked the prior concurrence of the local agency superintendent.

Ms. Fowler remains convinced that she is entitled to an extension of the two relocation benefits thus far denied to her by her agency. She contends that, as a result of the agency's refusal to grant the requested extensions, she has incurred \$7035 in unreimbursed subsistence expenses and \$289.69 for additional storage of her household goods beyond the authorized ninety-day period.

### Discussion

At the time of Ms. Fowler's transfer, the Federal Travel Regulation (FTR) had the following provision regarding extension of the TQSE:

Q: How long may I be authorized to claim actual TQSE reimbursement?

A: Your agency may authorize you to claim actual TQSE in 30-day increments, not to exceed 60 consecutive days. However, if your agency determines that there is a compelling reason for you to continue occupying temporary quarters after 60 consecutive days, it may authorize an extension of up to 60 additional consecutive days. Under no circumstances may you be authorized to claim actual TQSE reimbursement for more than a total of 120 consecutive days.

41 CFR 302-5.104 (1999) (FTR 302-5.104). This provision remains essentially unchanged in the current version of the FTR.

The requirement that there be "a compelling reason" for extending an employee's TQSE reimbursement beyond the initial sixty-day period is itself a statutory requirement. See 5 U.S.C. § 5724a(c) (Supp. V 1999). In implementing this requirement, the FTR has defined "compelling reason" as "an event that is beyond your control and is acceptable to your agency." FTR 302-5.105. Some examples given in the regulation are:

- (a) Delivery of your household goods to your new residence is delayed due to strikes, customs clearance, hazardous weather, fires, floods or other acts of God or similar events.
- (b) You cannot occupy your new permanent residence because of unanticipated problems (e.g., delay in settlement on the new residence, or short-term delay in construction of the residence).
- (c) You are unable to locate a permanent residence which is adequate for your family's needs because of housing conditions at your new official station.
- (d) Sudden illness, injury, or death of employee or immediate family member.

FTR 302-5.105.

The issuance of a TQSE allowance is clearly a matter of agency discretion. In answer to the question of whether an agency *must* authorize payment of a TQSE allowance, the FTR responds: "No, your agency determines whether it is in the Government's interest to pay TQSE." FTR 302-5.6. Although the further extension of this allowance beyond the initial sixty days is still a matter left to agency discretion, statute and regulation raise the bar somewhat by requiring that the agency be satisfied that there is a "compelling reason" in support of a request for an extension beyond sixty days.

In Ms. Fowler's case, the agency, in deference to her personal preference, did not insist that she make use of available Government housing. Reimbursement of TQSE,

however, was authorized with the expectation that she would secure promptly permanent quarters in lieu of the offered Government housing. When, after sixty days, the employee had yet to move into permanent quarters, the agency understandably concluded that it was not in the Government's interest to extend the TQSE authorization further. Quite obviously, the continued availability of Government-owned housing made it highly unlikely that there could be a compelling reason for extending the authorization beyond sixty days. Certainly the reasons offered by claimant fall short of that requirement given the circumstances of this particular case.

It is well settled that because the authorization of TQSE allowances is left to the broad discretion of an employee's agency, this is not a matter in which we become involved unless we conclude that the agency's exercise of discretion is arbitrary, capricious, or contrary to law. E.g., Rafael Alvarez, GSBCA 15651-RELO, 01-2 BCA ¶ 31,636; James E. Roberts, GSBCA 15592-RELO, 01-2 BCA ¶ 31,567; William T. Stowers, GSBCA 14099-RELO, 97-2 BCA ¶ 29,096; Holly Rowe, GSBCA 14037-RELO, 97-1 BCA ¶ 28,934. In this case we find no such egregious defect in the agency's decision not to extend claimant's TQSE allowance beyond sixty days. We, therefore, deny this aspect of her claim.

What, however, of the agency's rejection of Ms. Fowler's request that her authorization to store her household goods for ninety days be extended by an additional thirty days? It is, of course, true that the standards for extending the TQSE period and extending the period of authorized storage of household goods are not the same. Clifford E. Peterson, GSBCA 15112-RELO, 00-1 BCA ¶ 30,812; Daniel A. Rische, GSBCA 14444-RELO, 98-1 BCA ¶ 29,677. The provision in the FTR dealing with the extension of the ninety-day limit on temporary storage states:

[U]pon an employee's written request, the initial 90-day period may be extended an additional period not to exceed 90 days under certain conditions if approved by the agency head or his/her designee. Justification for an additional storage period may include but is not limited to the following reasons:

- (1) An intervening temporary duty or long-term training assignment;
- (2) Nonavailability of suitable housing;
- (3) Completion of residence under construction;
- (4) Serious illness of employee or illness or death of a dependent; or
- (5) Strikes, acts of God, or other circumstances beyond the control of the employee.

FTR 302-8.2(d). From this provision and the examples given, it is apparent that an extension of the normal ninety-day period of authorized temporary storage is readily

justifiable when an actual event or circumstance over which a claimant has virtually no control necessitates continuation of the temporary storage.

The reasons given by Ms. Fowler for the two extensions she sought were the need to complete negotiations on the purchase price of her home and "any unanticipated problems, such as a delay in settlement of the new residence which may hinder occupying the residence in a timely manner." The reference to "any unanticipated problems" and the single example given does not appear to involve an actual event or circumstance but rather a hypothetical event or contingency which may occur – hardly a justifiable basis under the regulation for extending the ninety-day period. As to the need for additional time to negotiate the purchase price of her home, Ms. Fowler has provided us with no meaningful evidence that her delay in purchasing a permanent residence in lieu of available Government housing was attributable to causes beyond her control. The agency understandably expected Ms. Fowler to pursue her search for permanent quarters on an expedited basis since, if she had accepted the initial offer of Government housing in lieu of permanent quarters, the need for temporary quarters would have been minimal or nonexistent. In the absence of any explanation of why she failed to secure permanent quarters promptly, we assume that her delay was attributable to causes well within her control.

Accordingly, we find the agency acted reasonably and in accordance with applicable regulation in concluding that Ms. Fowler's request for an extension of the authorized period for temporary storage should also be rejected. We, therefore, deny this aspect of her claim as well.

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EDWIN B. NEILL  
Board Judge