

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 20, 2003

GSBCA 16101-RELO

In the Matter of JOSEPH E. CONNELLY

Joseph E. Connelly, Philadelphia, PA, Claimant.

Gerald K. Schoenauer, Director, Office of Financial Services, Federal Railroad Administration, Department of Transportation, Washington, DC, appearing for Department of Transportation.

BORWICK, Board Judge.

Claimant, Joseph E. Connelly, an employee of the Department of Transportation, Federal Railroad Administration (FRA), seeks reimbursement of temporary quarters subsistence expenses (TQSE) incurred during his permanent change of station (PCS) move. Claimant maintains that he incurred the expenses during an unanticipated delay in the construction of his residence at his new duty station. Claimant asserts that he has shown a compelling circumstance under the Federal Travel Regulation (FTR) to extend the period of TQSE eligibility. The agency denied claimant reimbursement of TQSE because he incurred them beyond the maximum period allowed under the FTR for incurrence of reimbursable TQSE. We deny the claim, since the agency acted in accordance with the FTR in denying reimbursement.

On or about January 3, 2002, the agency authorized claimant a PCS move from Columbus, Ohio, to Lester, Pennsylvania. Claimant's reporting date to his new duty station was January 27, 2002. Among other benefits, the agency authorized claimant reimbursement of TQSE for a sixty-day period. The agency advised claimant that he could apply for two thirty-day extensions of the TQSE period.

The agency maintains, and claimant does not dispute, that claimant's TQSE period began on January 27, 2002.¹ Claimant's initial period of TQSE ended, therefore, on March 27, 2002.

Claimant was a frequent traveler. Claimant explains that when he went on temporary duty (TDY), he checked out of his quarters and continued to do so each time he went on TDY. The agency states that "its comprehensive review of all travel vouchers claimant submitted between January 27 and June 12 discloses that during that period, [claimant] claimed a total of [forty-seven] days of TDY expenses for which he was reimbursed." Claimant does not dispute the agency's conclusion that claimant was on TDY for forty-seven days during that period.

On August 16, 2002, claimant wrote the Deputy Associate Administrator for Safety, FRA, and requested a thirty-day extension of time for TQSE because of unanticipated delays in new construction. Claimant's request was premised on the assumption that "in the very near future my moving allowance will have reached the [sixty-] day time limit for PCS moves." Claimant submitted vouchers for TQSE expenses he incurred at various periods from October 1 through December 31, 2002.

The agency rejected claimant's request for an extension because by the time claimant made that request his permissible TQSE period had expired. According to the agency's calculation, allowing ninety days from January 27, 2002--claimant's first day in temporary quarters--results in a TQSE expiration date of April 26, 2002. An additional forty-seven days for claimant's TDY travel added on to that period would result in an expiration date of June 12, 2002. The agency asserts that claimant was "fully reimbursed for all allowable expenses" incurred through June 12, 2002. According to the agency, between June 13 and July 28, 2002, claimant spent sixteen additional days on TDY. Allowing a full 120 days extension of the TQSE period and accounting for the additional sixteen days interruption would bring the TQSE expiration date to July 28, 2002.

Discussion

Under the FTR, assuming the agency exercises its discretion and grants an employee all possible extensions of time, an employee in PCS status is entitled to a maximum of 120 consecutive days of TQSE. 41 CFR 302-6.104. Here, the agency granted claimant an initial period of sixty days. That period expired on March 27, 2002. The TQSE period runs on consecutive days and normally continues to run whether or not the employee occupies

¹ The FTR defines TQSE as expenses incurred by the employee or the employee's immediate family "while occupying temporary quarters." 41 CFR 302-6.2 (2002). The agency presumes that claimant's duty reporting date of January 27, 2002, is the same date that claimant commenced his occupancy of temporary quarters. Claimant does not provide another date in January 2002 when he and his family actually started occupying temporary quarters. The most claimant says is that "when I finally arrived at my duty station I was present in temporary quarters for two days." We therefore accept the agency's conclusion that January 27 was the commencement period for claimant's initial period of TQSE.

temporary quarters. 41 CFR 302-6.106. Under the FTR, however, the period of TQSE may be interrupted "for circumstances attributable to official necessity such as an intervening temporary duty assignment." 41 CFR 302-6.106(b). In such a case the employee is entitled to a day-for-day extension of the consecutive period of eligibility. Alfred J. Costanzo, GSBCA 13718-RELO, 97-1 BCA ¶ 28,872. The period of eligibility, however, may not exceed 120 days. James E. Roberts, GSBCA 15592-RELO, 01-2 BCA ¶ 31,567. The agency reimbursed claimant for all allowable expenses through June 12, the ending date which takes into account claimant's forty-seven day interruption of the TQSE period for TDY and an additional thirty-day extension of claimant's TQSE period beyond the sixty days the agency originally had granted.

Since under the FTR the consecutive TQSE period continues to run, whether or not the employee occupied temporary quarters, the maximum 120-day period would have expired on July 12. Allowing another sixteen day period for claimant's additional TDY would have brought the ending date of the maximum TQSE period to July 28. Claimant apparently does not understand that, under the FTR, the agency must establish a consecutive period for eligible TQSE and then add days on to that consecutive period when the TQSE period has been interrupted for reasons allowable under the FTR. The agency may not simply count scattered days throughout the calendar as a period. Claimant's request for an extension on August 16 for expenses to be incurred the following fall and winter came after his maximum allowable TQSE period had already expired. The agency acted correctly in denying the claim. Claimant maintains he was the victim of bad advice, but even if he were, wrong or bad advice creates no entitlement where none exists. Jacques E. Moss, GSBCA 16150-RELO (July 24, 2003) (citing Aman B. Kay, GSBCA 15543-RELO, 01-2 BCA ¶ 31,508).

ANTHONY S. BORWICK
Board Judge