

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 15, 2005

GSBCA 16625-RELO

In the Matter of VIRGIL G. HOBBS III

Virgil G. Hobbs III, Hartwell, GA, Claimant.

Shirley L. Autry, Deputy Director, Finance, United States Army Corps of Engineers Finance Center, Millington, TN, appearing for Department of the Army.

NEILL, Board Judge.

Claimant, Virgil G. Hobbs III, is a civilian employee of the United States Army Corps of Engineers. In June 2003, he was transferred to the Corps' Hartwell Project Office in Hartwell, Georgia. The agency authorized relocation benefits for Mr. Hobbs' permanent change of station (PCS) move. Among the benefits authorized was a temporary quarters subsistence expense (TQSE) allowance. After Mr. Hobbs completed his move, the station advised him that, notwithstanding the original authorization, he was not entitled to reimbursement of TQSE because his new permanent duty station (PDS) was less than fifty miles distant from his old PDS. Mr. Hobbs has asked that we review the agency's denial of this benefit. For the reasons stated below, we conclude that the agency is correct that the original authorization of a TQSE allowance was, in fact, an error.

Background

Mr. Hobbs initially attempted to avoid moving into temporary quarters near his new PDS. Nevertheless, after selling his former residence, he ultimately found it necessary to do so owing to the unavailability of adequate permanent housing. He, therefore, requested an advance of funds for TQSE. The agency provided him with \$5600 for this purpose. Apparently in recognition of Mr. Hobbs' difficulties in finding suitable housing, the agency

later agreed to extend the original sixty-day authorization of TQSE for an additional sixty days.

Only after Mr. Hobbs actually sought reimbursement for additional TQSE did the agency question his eligibility for this benefit. He was asked to provide information regarding the distance between his old and new duty stations and the commuting distance from his former residence to each of these duty stations. The agency explained that the information was required because of certain limitations on relocation benefits for a transferred employee involved in a short-distance PCS move. Using the internet “Mapquest” program, Mr. Hobbs determined that the distance between the two stations was 38.9 miles. When he measured the distance with a vehicle odometer, however, the distance was found to be 42.9 miles. As to the increase in driving distance to the new PDS from Mr. Hobbs’ former residence, he determined this to be greater than ten miles.

The agency eventually concluded that Mr. Hobbs was entitled to reimbursement for real estate and moving expenses, but in paying his claim for these expenses, it deducted the \$5600 previously paid to him as an advance on his TQSE. The claimant questions the logic of the regulations on which the agency has relied. He writes: “I see no reason for close proximity of duty stations to negate the necessity of temporary quarters if relocation is warranted by other criteria.”

Discussion

At the time of Mr. Hobbs’ transfer, the Federal Travel Regulation (FTR) stated, as it does today, that generally an employee transferred in the Government’s interest is not reimbursed for relocation expenses if his or her new official station is less than fifty miles from the old official station. 41 CFR 302-2.6 (2002) (FTR 302-2.6). This rule, however, is not hard and fast. The same regulation provides that the agency head or designee can authorize an exception to the rule on a case-by-case basis when he or she determines that an exception would be in the Government’s interest and there is an increase in commuting time or distance (of at least ten miles), or there is a financial hardship resulting from increased commuting costs. *Id.*

Mr. Hobbs, as a civilian employee of the Department of Defense, is subject to the Department’s Joint Travel Regulations (JTR), which implement and supplement the FTR. At the time Mr. Hobbs reported to his new duty station in early June 2003, the implementation of FTR 302-2.6 was found in section JTR C4108. The provision has since been moved, with only slight changes, to JTR C5080-F. Although it is clear that Mr. Hobbs’ old and new duty station are less than fifty miles apart, the agency apparently determined, in accordance with FTR 302-2.6 and JTR C4108, that it was in the Government’s interest to

make an exception and that the requirements for doing so were met. We find nothing in the record suggesting that there is any dispute between Mr. Hobbs and his agency on this point.

The only relocation reimbursements sought by Mr. Hobbs which the agency now denies relate to TQSE. It is clear from both the FTR and the JTR that the agency's authority to make an exception to the general rule precluding employees from reimbursement of relocation expenses for short distance transfers does not extend to TQSE allowances. In listing the eligibility requirements for receiving a TQSE allowance, both the FTR and the JTR expressly state that the old and the new PDS must be fifty miles or more apart (as measured by map distance) via a usually traveled surface route. FTR 302-6.4(b); JTR 13115-A.3. Neither provision authorizes the agency to grant exceptions to this requirement if deemed to be in the Government's interest.

The conclusion we draw from these regulations is that, for such a short PCS move, temporary quarters are not considered necessary as an intermediate step for transferred employees. Admittedly this may require the transferred employee to coordinate more closely his or her move from one residence to another. Nevertheless, given the proximity of the two duty stations, this apparently is not considered to be unduly burdensome. While we recognize that in Mr. Hobbs' case temporary quarters served a very real purpose, we are not persuaded, as he contends, that the applicable regulatory scheme for employees involved in short distance PCS moves is unreasonable and lacking in logic.

The agency is correct, therefore, in concluding that, because Mr. Hobbs' old and new duty stations were less than fifty miles distant from each other, he is not entitled to reimbursement of TQSE.

Unfortunately the agency, from the outset, led Mr. Hobbs to believe that he was entitled to TQSE. It provided him with an advance of \$5600 to cover these expenses and even extended his original TQSE authorization by an additional sixty days. We note that, if the head of an agency or other authorized official determines that the collection of an amount erroneously advanced to an employee "would be against equity and good conscience and not in the best interests of the United States," that official may waive the Government's claim to the money. 5 U.S.C. § 5584 (2000).

In view of Mr. Hobbs' good-faith reliance on the incorrect guidance consistently provided to him on the matter of TQSE throughout his PCS move, the agency may wish to consider waiving its claim for all or part of the \$5600 previously advanced to Mr. Hobbs for TQSE. This could readily be done by eliminating or reducing the offset the agency applied against Mr. Hobbs' real estate and moving expenses in order to recover the TQSE advance.

Patricia G. Smith, GSBCA 16417-RELO, 04-2 BCA ¶ 32,703; *Jacqueline G. Sablan*, GSBCA 15961-TRAV, 03-2 BCA ¶ 32,309. This, however, is a matter for determination by

the agency itself, to be made in accordance with its own regulations. *Thomas M. Stan*, GSBCA 16679-RELO (Aug. 25, 2005); *Grover M. Pegg*, GSBCA 16118-RELO, 04-1 BCA ¶ 32,587; *Alexander J. Qatsha*, GSBCA 15494-RELO, 01-1 BCA ¶ 31,364.

EDWIN B. NEILL
Board Judge