

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 2, 2006

GSBCA 16826-RELO

In the Matter of VICKY LYNN TUCCI

Vicky Lynn Tucci, Aurora, CO, Claimant.

Veronica Hibbler, Associate Counsel, Office of General Counsel, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

GOODMAN, Board Judge.

Claimant, Vicky Lynn Tucci, is a civilian employee of the Department of Defense. She has requested that this Board review the agency's denial of her request for a sixty-day extension of the period for reimbursement of temporary quarters subsistence expenses (TQSE) related to a permanent change of station (PCS) move.

Factual Background

In July 2005, claimant, then an employee of the Treasury Department, was issued travel orders transferring her from Parkersburg, West Virginia, to a new permanent duty station (PDS) at the Defense Finance and Accounting Service (DFAS) in Denver, Colorado, with a report date of August 2, 2005.¹ Her orders authorized sixty days of TQSE reimbursed by the actual expense method.

On August 6, 2005, claimant and her family moved into a small rental apartment at her new duty station, and shortly thereafter began to search for a home to purchase for

¹ Claimant's husband was also similarly employed and accepted a similar transfer.

permanent housing. On August 25, 2005, an announcement was made that the Base Realignment and Closure Commission (BRAC) was recommending closure of the DFAS-Denver site. Claimant states that she and her husband had conversations with agency management who recommended that they wait until the BRAC's recommendations were finalized before making any decision as to permanent housing, as it was possible that they would have to be relocated within five months. She states further that agency management advised her not to seek permanent housing until this situation was clarified.

During the last week in August claimant rented a house large enough to accommodate her family. She tried to enter into a month to month lease but could only secure a one year lease. She had her household goods (HHG) delivered to the rental house. Claimant was advised by agency management that delivery of her HHG would not result in the rental house being viewed as permanent housing. She states that at that time the fact that she entered into a lease financially constrained her from purchasing a new home in Denver until she sold her residence at her old duty station.

On September 8, 2005, claimant submitted a written request to her supervisor to extend her TQSE period. This request read:

This is the official request to extend my stay in temporary quarters an additional 60 days. This is due to several factors including our house in West Virginia has not sold, the BRAC process and the fact that we will probably be closing, and an inability to make solid plans due to there not being a timeline associated with the BRAC process. We plan on staying in temporary quarters at least until a time line is available relating to the BRAC process. While we are waiting for this, hopefully our house in West Virginia will sell.

On September 28, 2005, claimant's supervisor forwarded this request to the agency stating that he concurred with the request.

In November 2005 the BRAC closures became final, and claimant became aware she would not be relocated until fiscal year 2007 or later. Thereafter she had entered into a contract to sell her house at her old duty station and by December 20 she advised agency management that "we are currently again looking for other housing" to purchase in Denver.

On December 22, 2005, she entered into a contract to purchase a home in Denver.² She closed on the new home on January 12, 2006.

Also on January 12, 2006, the agency denied the request for an extension of TQSE. The denial cited Joint Travel Regulations (JTR) C13210-B.1 (Aug. 2005)³ as the applicable regulatory basis and stated that claimant had not fulfilled the requirements of “compelling reason” for an extension. As factual grounds for the denial, the agency stated:

We have determined that your inability to find suitable housing was due to your personal choice. You have not demonstrated that there were any “compelling reasons” beyond your control to justify extending your temporary quarters. It has been consistent DFAS policy that delays or difficulties in selling one’s former residence do not constitute a compelling reason to extend TQSE. Although understandable, the decision to restrict the search to a neighborhood that would allow your children to remain in the same school, thereby limiting the availability of adequate housing, was within your control.

We have also determined that you acquired permanent quarters at the time you signed the one year lease agreement based on the following factors you provided in your request for extension 1) You limited your search of adequate housing to a small area close to your children’s school before and after signing the one-year agreement; 2) You did not actively search for a new residence pending final BRAC timelines; 3) You moved your HHG into the rental home. In addition, your intentions to find a permanent residence sometime after your old residence is sold are not specific enough to show that the rental property is a temporary quarter.

Claimant has requested that this Board review the agency’s denial.

² The lease on claimant’s rental house allowed her to be relieved of the remainder of the rent for the one-year term if she vacated and found another tenant. Claimant vacated the rental house on January 14, 2006, and on February 15, 2006, she was released from the lease, as another tenant was found to occupy the house.

³ While claimant asserts that the current JTR provision governs her situation, this provision of the JTR is applicable, as it was the regulation in effect on the date claimant reported to her new duty station.

Discussion

By statute, when the Government transfers an employee from one permanent duty station to another in the interest of the Government, the agency has the authority to pay the subsistence expenses the employee incurs while occupying temporary quarters, provided certain requirements are met. 5 U.S.C. § 5724a(c) (2000). The Federal Travel Regulation (FTR) implements the statute; the JTR, applicable to civilian employees of the Department of Defense, supplement the FTR. Both the FTR and the JTR recognize that the purpose of a TQSE allowance is to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary for the relocating employee to occupy lodging obtained for the purpose of temporary occupancy while arranging for permanent quarters at the new duty station. 41 CFR 302-6.1, -6.3 (2005); JTR C13110 (July 2005); *see Donald D. Fithian, Jr.*, GSBCA 16712-RELO, 06-1 BCA ¶ 33,204; *David S. Reinhold*, GSBCA 16334-RELO, 04-1 BCA ¶ 32,576.

In this case, shortly after claimant reported to duty at her new PDS and moved into a small apartment as temporary quarters, she became aware that her new PDS was on the BRAC closure list. She decided not to attempt to purchase a house until she received definite information as to the timing of the closure of her PDS. She stated in her request to extend her TQSE that at that point she “plan[ned] on staying in temporary quarters at least until a time line is available relating to the BRAC process.” She signed a lease for a rental house large enough for her family and had her HHG delivered. She considered the rental house temporary quarters. As she believed that she might be relocating within five months, she planned to resume her search for what she considered permanent quarters, a home to purchase, only if the period of time before closure of her PDS, based upon the final BRAC closure, made seeking other quarters feasible.

While claimant viewed herself as living in the rental house “temporarily” until she received additional information as to the BRAC time line, this did not mean that the rental house was temporary quarters for purposes of receiving TQSE. Claimant suspended her search for other housing while she awaited further information concerning the possible closure of her PDS. She did not receive information about the BRAC timeline until November 5, 2005, and this convinced her to resume her search. At least from September 8 through November 5, 2005, she was not seeking other housing. The first indication in the record that she had resumed a search for other housing is her email dated December 20, 2005.

As stated above, the purpose of a TQSE allowance is to reimburse an employee for subsistence expenses incurred when it is necessary to obtain temporary lodging while arranging for permanent quarters at the new duty station. *Fithian; Reinhold*. We have also held that, under the applicable regulations, one is either in temporary quarters or in

permanent quarters. *Charles F. Ruerup*, GSBCA 15955-RELO, 03-1 BCA ¶ 32,227. When claimant moved into the rental house within thirty days of her report date and suspended her search for other housing, the agency reasonably considered that her quarters ceased to be temporary quarters for the purpose of reimbursement of TQSE, as she was no longer seeking permanent housing. The rental house became permanent quarters, and she therefore would not be entitled to any extension of the TQSE period.

The agency 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 Nora L. Donahue*, GSBCA 15687-RELO, 02-1 BCA ¶ 31,780; *John E. Joneikis*, GSBCA 15455-RELO, 01-2 BCA ¶ 31,514; *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. While the agency decision addressed issues that we do not find necessary to address in deciding this case, under the circumstances, we cannot find that the agency’s decision not to extend the TQSE period was an abuse of its discretion.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge