

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 28, 2006

GSBCA 16871-RELO

In the Matter of LINA A. GHORY

Lina A. Ghory, Richardson, TX, Claimant.

JoAnne Rountree, Supervisor, Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

HYATT, Board Judge.

Claimant, Lina A. Ghory, is a physician employed by the Department of Veterans Affairs (VA). In November 2005, she relocated in the interest of the Government from the VA's Healthcare Center in Orlando, Florida, to the North Texas VA Health Care System in Dallas. Her claim concerns payment for temporary quarters subsistence expenses (TQSE).

Background

Dr. Ghory was initially authorized thirty days of TQSE, and an extension of an additional thirty days was approved in December 2005. She reported to her new permanent duty station on November 13, 2005. Shortly after arriving in Texas, Dr. Ghory entered into a nine-month lease of an apartment. Her household goods were delivered to the apartment on November 23, 2005. Claimant explains in her letter to the Board that she specifically requested that the moving company unload part of her household goods at the storage facility and deliver only part of the household furnishings to the apartment, which was too small to hold all of her effects. She was advised that the household goods had to be fully unloaded at one location. As a result, all of claimant's household goods were delivered to her

apartment and approximately half of her household effects are stored in the garage at her apartment.

In January 2006, Dr. Ghory submitted a voucher for relocation expenses, including fifty-three days of TQSE. During the auditing process, the VA requested a copy of the lease. Upon determining that the lease term was nine months and that all of claimant's household goods had been delivered to the apartment, the VA denied a large portion of the claimed TQSE amount. The basis for the disallowance was that Dr. Ghory had occupied permanent quarters as of the date her household goods were delivered to an apartment, which had been leased for a period in excess of six months. Dr. Ghory disputes this decision, stating that she was not properly advised about the delivery of her household goods to storage versus her temporary quarters or that this would affect approval of her TQSE reimbursement.

Discussion

The Federal Travel Regulation (FTR) defines TQSE to be "subsistence expenses incurred by an employee and/or his/her immediate family while occupying temporary quarters." 41 CFR 302-6.2 (2005). Temporary quarters are "lodging obtained for the purpose of temporary occupancy from a private or commercial source." *Id.* 302-6.1. Eligibility for TQSE ends whenever a transferred employee "and/or any member of [that employee's] immediate family occupies permanent residence quarters." *Id.* 302-6.108. The FTR provides guidance with respect to the determination of when quarters are temporary or permanent:

In determining whether quarters are "temporary," [the agency] should consider factors such as the duration of the lease, movement of household effects into quarters, the type of quarters, the employee's expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters.

Id., 302-6.305. See generally *William M. Misczak*, GSBCA 16242-RELO, 04-1 BCA ¶ 32,579; *Charles F. Ruerup*, GSBCA 15955-RELO, 03-1 BCA ¶ 32,227.

This determination can vary depending on the circumstances. The central issue is the employee's intent and the evidence available to show what that intent was. In *Ruerup*, the Board aptly summarized precedent addressing what should be considered in analyzing the temporary or permanent nature of an employee's occupancy of quarters that have been leased for more than the usual amount of time for which subsistence will be authorized:

The Board has found in other cases that notwithstanding the existence of a lease of at least one year in length, quarters an agency deemed permanent were more properly considered temporary. In those cases, however, there was a great deal of evidence that the employee and his family were intent on moving from the dwelling in question. For example, in *Thomas P. Simon*, GSBCA 15131-RELO, 00-1 BCA ¶ 30,792, the employee looked at hundreds of building lots and bought one on which to construct a house; and in *Felicia D. DeJesus-Walters*, GSBCA 15986-RELO[, 03-1 BCA ¶ 32,220], the employee made “vigorous and sustained efforts” to sell two houses she owned and also contracted to purchase a home at her new duty station. Mr. Ruerup’s situation is more like those where we agreed with the agency as to the permanence of quarters, such as *Susan E. Clark*, GSBCA 15983-RELO[, 03-1 BCA ¶ 32,183], where “[t]he only indicium of [the employee’s] intent to remain only temporarily was the absence of her [household goods],” and *Keith E. Kuyper*, GSBCA 15839-RELO, 02-2 BCA ¶ 31,983, where we commented that “[c]laimant’s hope to be able to purchase a house when circumstances permit is too vague to qualify the residence as temporary quarters for TQSE purposes.” 03-1 BCA at 159,357. In *DeJesus-Walters*, the Board recognized that the signing of a one-year lease alone will not disqualify an employee from TQSE reimbursement “if all of the factors combined demonstrate the employee’s initial intent to remain in the quarters temporarily.”

03-1 BCA at 159,346.

In evaluating Dr. Ghory’s voucher, the agency acted on the sketchy information it had available to it to conclude that claimant’s quarters were permanent. That assessment was appropriate based on what the agency knew. We have recognized, however, that an employee may effectively counter the conclusion that quarters are permanent by showing that his or her intent was to enter into temporary quarters and continue to search for permanent housing. We infer from statements made by claimant that there may be more factors to consider. Dr. Ghory suggests that she had intended to keep a large portion of her household goods in temporary storage and that this apartment is too small to accommodate all of her furnishings and belongings. These statements suggest that she may be diligently continuing to search for larger permanent quarters. To the extent that Dr. Ghory did not understand that a nine-month lease could be regarded as permanent quarters, and she can demonstrate her

intent that the apartment would be temporary until more suitable permanent quarters could be located, it might still be appropriate for the VA to allow TQSE to be paid for the period authorized by the agency. Information relevant to this inquiry would include documentation of continuing efforts to locate permanent quarters, whether claimant could break the lease if permanent quarters became available, and the like. It is claimant's burden to make this case, however. To the extent that claimant can provide more concrete evidence supporting the temporary nature of her occupancy of the apartment, it would be appropriate for the VA to revisit its determination in light of a more complete record.

CATHERINE B. HYATT
Board Judge