

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 6, 2006

GSBCA 16892-RELO

In the Matter of RAJIV R. SINGH

Rajiv R. Singh, New Market, MD, Claimant.

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

BORWICK, Board Judge.

Rajiv R. Singh, claimant, an employee of the United States Army Corps of Engineers, agency, was granted temporary quarters subsistence expense (TQSE) reimbursement in connection with claimant's permanent change of station (PCS). Claimant contests the denial by the agency's Finance Center of an extended period of TQSE reimbursement, although the agency's district office found that circumstances warranted such an extension. We grant the claim in part. The agency's district office did not act arbitrarily or capriciously in granting the TQSE extension. However, for the reasons stated below, claimant is entitled to only a portion of the TQSE extension he seeks.

Background

On or about April 20, 2005, the agency issued a travel authorization to claimant for claimant's PCS from Tulsa, Oklahoma, to Silver Spring, Maryland. The agency authorized, among other benefits, claimant's reimbursement of sixty days of TQSE and shipment of claimant's household goods (HHG) by a government bill of lading (GBL). Claimant took a house hunting trip on April 21, 2005, and, while on that trip, leased an apartment in the Washington, D.C., area from May 16 through August 31, 2005.

Claimant entered temporary quarters on May 16, 2005. At some point, claimant contracted for the purchase of a house with a closing date of July 21, 2005. Claimant explains that he purchased the residence at his new duty station from a seller who was moving into new construction. One week prior to the closing date, the seller requested a two-week delay in closing the sale because of delays in the new construction. Claimant's mortgage lender advised that if the closing were delayed, claimant would have to obtain a new mortgage at a higher interest rate. Instead, claimant and the seller entered into a rent-back agreement in which the seller remained in the house for eight days in exchange for the seller paying a pro-rata share of the mortgage.

Immediately after closing, claimant called his movers who told claimant that because of the mover's previous commitments, his HHG could not be delivered to his residence until August 19. On July 21, the agency's district office approved an additional sixty-day extension of claimant's TQSE reimbursement.

The previous owner of the residence had many pets, and upon his moving out, it became apparent that the house needed cleaning to get rid of the pet detritus, which posed a health hazard to claimant's children. The house also needed painting.

Claimant states that the house was sanitized and cleaned by August 18, and that the movers delivered the HHG on August 19, as promised. Claimant considered the house ready for occupancy on August 20, and states that it took two days to "set up" the furniture.

Claimant states he started moving into the house on August 19 and completed the move on August 31. Claimant considers August 31 the end date of his move for two reasons. The first reason was that August 31 was the ending date of the apartment lease. The second reason was that claimant moved some items out of his rental apartment in his car after work to his residence, which was sixty miles distant from his apartment.

Claimant submitted a travel voucher for \$16,346.17, which represented lodging and meals from May 16 through August 31. The agency's Finance Center denied claimant reimbursement of TQSE past the closing date of July 21 because, unlike the agency's district office, it did not consider claimant to have a compelling reason for the extension of TQSE under Joint Travel Regulations (JTR) C5364-B.2.¹

¹ The "compelling reason" provision at the time claimant reported for duty at his new duty station was found at JTR C13210-B.1 (Dec. 1, 2004).

The decision to grant extensions of TQSE lies within the sound discretion of the agency and will not be overturned unless that decision is found to have been arbitrary and capricious. *Vicki Lynn Tucci*, GSBCA 16826-RELO (Aug. 2, 2006). Here the agency's district office approved a sixty-day extension of TQSE. That determination was supported in reason. The mover hired by the Government advised claimant shortly after closing on the new residence that it could not deliver claimant's HHG until August 19, 2005, thus rendering the new residence unavailable for permanent occupancy. Such an unanticipated circumstance has been determined to be sufficient justification for an extension of TQSE. *William D. Dudley*, 67 Comp. Gen. 310 (1988) (citing *Irving R. Warnasch*, B-193885 (June 8, 1979)).

This Board has also held, despite the views of the agency's Finance Center, that a short-term extension of TQSE due to a rent-back arising out of a seller's unanticipated delay in vacating a residence will support an agency's exercise of discretion in approving a TQSE extension. *See Andrew W. Frank*, GSBCA 16919-RELO (Aug. 2, 2006). Here the agency's district office determination was reasonable based on a variety of factors that are apparent in the record before the Board: the delay in the delivery of claimant's HHG; the inability, for a brief period, of claimant's seller to vacate the house; and the necessity of sanitizing the house due to unanticipated pet contamination.

Claimant, however, is not entitled to a TQSE extension until August 31. Claimant says that he completed his move on August 31 because that is when his short-term lease ended. The TQSE allowance is intended to reimburse employees for subsistence expenses incurred when it is necessary to occupy temporary quarters. 41 CFR 302-6.3 (2004). Case law construing the applicable regulation holds that TQSE lasts only until the permanent residence is reasonably available. *David S. Reinhold*, GSBCA 16334-RELO, 04-1 BCA ¶ 32,576; *Dudley*.² The record establishes that claimant's house was available on August 20, upon the delivery of the furniture. By that date, the house was sanitized and ready for occupancy. Claimant is entitled to TQSE reimbursement commencing May 16, 2005, through midnight of August 19, 2005. 41 CFR 302-6.108. Claimant's decision to delay completion of his move until the expiration of his short-term lease on August 31 was made for personal reasons and does not enlarge his entitlement to TQSE reimbursement beyond midnight of August 19. The Board grants the claim in part.

² Ordinarily, the total length of extended TQSE is for the agency to determine in the first instance, considering all of the surrounding circumstances, particularly when those circumstances may not be apparent in the record. *See Vanessa A. Deal*, GSBCA 15481-RELO, 01-1 BCA ¶ 31,407. However, we may also make such a determination based upon the facts presented to us by the agency and the claimant, *Dudley*, and we do so here in view of the complete record before the Board.

ANTHONY S. BORWICK
Board Judge