



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 16, 2007

CBCA 822-RELO

In the Matter of JOSEPH S. MIKAC

Joseph S. Mikac, Crane, IN, Claimant.

Donna Evans, Human Resource Specialist, Civilian Personnel Advisory Center, Rock Island Arsenal, Department of the Army, Rock Island, IL, appearing for Department of the Army.

BORWICK, Board Judge.

Claimant, Mr. Joseph S. Mikac, contests the Department of the Army's denial of his claim for an extension of the eligibility period for reimbursable actual temporary quarters subsistence expenses (TQSE).¹ The Civilian Personnel Advisory Center (CPAC) denied the claim. We sustain the denial of the agency, as it correctly applied the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR).

Background

On or about June 21, 2006, the agency authorized claimant a permanent change of station (PCS) in the interest of the Government from the Naval Support Activity, Millington, Tennessee, to the Crane Army Ammunition Activity, Crane, Indiana. Among other benefits, the agency authorized claimant reimbursement of ten days' house hunting expense and fifty days of actual TQSE reimbursement at his new duty station. Claimant's duty reporting date was July 23, 2006.

¹ Statute and regulation provide for two types of TQSE reimbursement: actual and fixed-rate. Only actual TQSE reimbursement is at issue in this case.

For the period July 21, 2006, through August 19, 2006, claimant spent four days house hunting and twenty-six days in temporary quarters. The agency reimbursed claimant his house hunting expenses and TQSE for that period. Claimant spent another thirty days in temporary quarters from August 20, 2006, through September 18, 2006, at which date his consecutive TQSE period came to an end. The agency reimbursed claimant TQSE for that period as well.

Claimant had trouble selling his house at his old duty station. Claimant states that he put his house on the market on June 20, 2006, but that due to the poor housing market, he was unable to sell it. Claimant says he was unable to purchase a house at his new duty station until he sold the house at his old duty station. Consequently, he moved into temporary quarters, with his family remaining in the house at his old duty station. Claimant's house was on the market during the running of the period of authorized TQSE, and it remained unsold on the market until January 2007.

In January, the agency issued an amended authorization which authorized a relocation services contractor to handle the real estate transaction. In April 2007, the relocation contractor offered to purchase the house from claimant. Claimant considered the offer a poor one, because the offered purchase price was only slightly more than claimant had paid for the house. The relocation contractor's offer was good until June 16, 2007, and claimant had until that date to secure a better offer on his own. In an unsuccessful attempt to sell the house, claimant had twice reduced the selling price, but decided to accept the relocation contractor's offer.

On May 14, 2007, a little under eight months after the expiration of claimant's TQSE period, claimant requested that the agency authorize an additional thirty days of TQSE. Claimant explained the troubles he encountered in selling the house at his old duty station, and that the additional TQSE reimbursement would ease the financial burden of his relocation. Although claimant's immediate supervisor was willing to grant the extension request, CPAC denied it on two grounds: (1) claimant requested the extension after the initial period of TQSE had expired; and (2) claimant's difficulty in selling the residence at the old duty station was personal to him and not an acceptable reason for granting an extension of the reimbursement period for TQSE. Claimant submitted a timely claim to this Board.

Discussion

Statute provides that an agency may pay an employee subsistence expenses for "a period up to 60 days" while an employee or family is occupying temporary quarters when the new official station is within the United States. 5 U.S.C. § 5724a(c)(1)(A) (2000). The agency may extend that period for up to an additional sixty days if the head of the agency or

his or her designee determines there are compelling reasons for continued occupancy of temporary quarters. 5 U.S.C. § 5724a(c)(2).

The FTR's implementation of that statutory provision provides in its question and answer format that an agency may authorize an employee to claim actual TQSE in thirty-day increments not to exceed sixty consecutive days. 41 CFR 302-6.104 (2006). An agency may authorize an extension of the period of TQSE for no more than 120 days if the agency determines that there is a compelling reason for the employee to occupy temporary quarters. A compelling reason is an event beyond the employee's control and acceptable to the agency. 41 CFR 302-6.104, 6.105.

The FTR in its question and answer format deals with the issue of an employee's interruption of temporary quarters:

May I interrupt occupancy of temporary quarters?

Yes, your authorized period for claiming actual TQSE reimbursement is measured on consecutive days, and once begun, normally continues to run whether or not you occupy temporary quarters. You may, however, interrupt your authorized period for claiming actual TQSE reimbursement in the following instances:

- (a) For the time allowed for en route travel between the old and new official stations;
- (b) For circumstances attributable to official necessity such as an intervening temporary duty assignment or military duty; or
- (c) For a non-official necessary interruption such as hospitalization, approved sick leave, or other reason beyond your control and acceptable to your agency.

41 CFR 302-6.106.

The JTR are to the same effect. As to time limits for TQSE, the JTR provide:

AOs [Authorizing Officials] may authorize/approve TQSE(AE) [Actual Expense] for the necessary number of days not to exceed an additional 60 consecutive days (i.e., no more than a total of 120 days, including the initial TQSE(AE) may be authorized/approved). Each of the following factors must

be considered when authorizing/approving and additional period of TQSE(AE):

a. The AO must determine there are compelling reasons (due to circumstances beyond the employee's control) for the continued temporary lodging occupancy.

Examples of circumstances that might be beyond the employee's control include:

(1) Delayed HHG [household goods] shipment and/or delivery to the new permanent private sector housing due to extended transit time incident to ocean transportation, strikes, customs clearance, hazardous weather, fires, floods, or other Acts of God;

(2) Delayed occupancy of new permanent private sector housing because of unanticipated problems (e.g., unforeseen delays in permanent private sector housing settlement/closing, but not a delay in new dwelling construction);

(3) Inability to locate permanent private sector housing adequate for family needs because of new PDS [permanent duty station] housing conditions;

(4) Sudden illness, injury, or death of the employee or of an immediate family member; and

(5) Similar factors.

JTR C5364-B.2.

The JTR also discusses interruption of TQSE. The JTR provide:

Once begun, the TQSE period continues to run whether or not the employee and/or dependents occupy temporary lodging except if occupancy is interrupted for:

a. Travel between the old and new PDS (actual travel time);

b. Necessary official duties such as an intervening TDY [temporary duty] assignment/military duty; or

c. Non-official necessary interruptions such as hospitalization, approved leave (sick but not annual), or other reasons beyond the employee's control that are acceptable to the AO.

JTR C5366-B.2.

As noted above, statute authorizes reimbursement of TQSE for "a period," not multiple periods. Consequently, the FTR and JTR both require one consecutive period of TQSE for reimbursement eligibility. As the General Services Board of Contract Appeals (GSBCA), one of our predecessor boards, has explained, the TQSE period runs consecutively, even during interruptions of the period recognized as allowable under the FTR.² In the case of interrupted TQSE, the employee is granted a day-for-day extension of the consecutive period of TQSE. *Joseph E. Connelly*, GSBCA 16101-RELO, 04-1 BCA ¶ 32,430 (2003). However, when the period for which the employee seeks a TQSE extension is not consecutive with the TQSE period the agency originally granted, the employee is not entitled to an extension. *Connelly; Michael W. Burns*, GSBCA 15649-RELO, 02-1 BCA ¶ 31,691.

In this case, claimant's period of eligibility for TQSE reimbursement expired in September 2006. Claimant sought from the agency an additional period of TQSE eligibility. In his submission to the Board, claimant maintains that the additional period should commence June 28, 2007, when claimant's family vacated the permanent residence. The agency acted correctly in denying that request, since approval of such a non-consecutive additional period of TQSE would violate statute and the implementing FTR and JTR.

Claimant alternatively asked the agency to extend the consecutive TQSE period retroactively. The GSBCA approved such a retroactive extension under limited circumstances--i.e., when the agency and the employee made a mutual mistake in believing that the employee had obtained permanent quarters before the end of the employee's TQSE period, or when an employee who was severely disabled inadvertently let the period of TQSE

² On January 6, 2007, pursuant to section 847 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, the General Services Board of Contract Appeals (GSBCA) was terminated and its cases, personnel, and other resources were transferred to the newly-established Civilian Board of Contract Appeals (CBCA). The holdings of the GSBCA and other predecessor boards of the CBCA are binding on this Board. *Business Management Research Associates, Inc. v. General Services Administration*, CBCA 464, 07-1 BCA ¶ 33,486.

lapse. *James E. Roberts*, GSBCA 15592-RELO, 01-2 BCA ¶ 31,567; *Timothy J. Helke*, GSBCA 15476-RELO, 01-1 BCA ¶ 31,289. Neither of these limited circumstances have been shown to apply here.

In this case, moreover, the agency denied the request for the additional reason that a generally poor market condition for the sale of a house was not a compelling reason justifying an extension of the TQSE period. A determination as to extending the period of TQSE eligibility is left to the sound discretion of the agency, and its discretion will not be overturned unless it is arbitrary and capricious. *Melinda Slaughter*, CBCA 754-RELO, 07-2 BCA ¶ 33,633; *Charles A. Nalley, III*, GSBCA 16798-RELO, 06-1 BCA ¶ 33,263. The GSBCA has held that an agency's denial of a TQSE extension because of selling difficulties in a generally bad housing market is not arbitrary and capricious. *Ralph M. Martinez*, GSBCA 14654-RELO, 98-2 BCA ¶ 30,105. We see no reason to depart from that holding here, especially given the lack of evidence of circumstances particular to claimant that he encountered in selling his house.

The agency correctly applied the FTR and JTR. The Board denies the claim.

ANTHONY S. BORWICK
Board Judge