



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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July 9, 2007

CBCA 754-RELO

In the Matter of MELINDA SLAUGHTER

Melinda Slaughter, Fishers, IN, Claimant.

Cynthia C. Cummings, Office of the General Counsel, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

**DANIELS**, Board Judge (Chairman).

The Defense Finance and Accounting Service (DFAS) authorized reimbursement of sixty days of actually-incurred temporary quarters subsistence expenses (TQSE) in conjunction with Melinda Slaughter's transfer from Florida to Indiana. DFAS later denied Ms. Slaughter's request that this period be extended for an additional ten days. Ms. Slaughter asks us to review and reverse the agency's denial of her request.

Background

Ms. Slaughter moved to Indiana on November 25, 2006, preparatory to beginning work there two days later. She says that she contacted a realtor immediately and worked diligently to find a permanent residence as quickly as possible.

On December 23, Ms. Slaughter signed a contract to purchase a home. She and the seller agreed that settlement would occur on January 19, 2007. This date was both preferred by the seller and, according to Ms. Slaughter, the earliest date on which her lender could make funds available.

The January 19 date was within sixty days of November 25. Nevertheless, it was beyond the period of Ms. Slaughter's eligibility for reimbursement of TQSE. Under the

Defense Department's Joint Travel Regulations (JTR), if an employee is reimbursed for a househunting trip and actually-incurred TQSE is later authorized and claimed for more than thirty days, the actual number of househunting trip days is deducted from the first thirty-day period of TQSE. JTR C5634-A. Before Ms. Slaughter moved to Indiana, the agency had paid for a ten-day househunting trip she had taken. Consequently, her TQSE was limited to only fifty days, or until January 13.

Early in January, after realizing that her TQSE eligibility would expire before she moved into her new residence, Ms. Slaughter asked for an extension of ten days of TQSE. DFAS denied the request, writing, "Your request states that you had miscounted the days left to you under TQSE when setting the closing date of January 19, 2007. Your error in establishing this date, standing alone, is not a compelling reason to extend the TQSE period."

Settlement of Ms. Slaughter's purchase of her new residence did not actually occur until January 23, due to last-minute concerns raised by her lender. She moved into the house on January 25.

#### Discussion

A TQSE allowance "is intended to reimburse [a transferred] employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters." 41 CFR 302-6.3 (2006). Whether to authorize TQSE to a relocating employee is a determination which is wholly within the discretion of the agency involved. 5 U.S.C. § 5724a(c)(1) (2000); 41 CFR 302-6.6; JTR C5350, C5352-D, C5356. Similarly, when the actual expense method of reimbursement of TQSE is elected, whether to extend the period of eligibility for reimbursement of TQSE beyond sixty days (up to a total of 120 days) is also a decision which is within the discretion of the agency. 5 U.S.C. § 5724a(c)(2); 41 CFR 302-6.104; JTR C5364-B.2.

The Federal Travel Regulation (FTR) and the JTR both permit an agency to extend the period of eligibility for reimbursement of actually-incurred TQSE beyond sixty days if the agency determines that there is a compelling reason for the employee to continue occupying temporary quarters. The compelling reason must be beyond the employee's control and acceptable to the agency. 41 CFR 302-6.104, -6.105; JTR C5364-B.2. The agency has considerable discretion here; its determination will be upheld unless we find that determination to have been arbitrary, capricious, or contrary to law. *J. D. Jamar, Jr.*, GSBCA 16646-RELO, 05-2 BCA ¶ 33,053; *Marvin R. McGee*, GSBCA 15829-RELO, 02-2 BCA ¶ 32,002; *Vanessa A. Deal*, GSBCA 15481-RELO, 01-1 BCA ¶ 31,407.

One of the examples given in the JTR of a compelling reason, beyond an employee's control, for an employee to continue occupying temporary quarters is "[d]elayed occupancy of new permanent private sector housing because of unanticipated problems (e.g., unforeseen delays in permanent private sector housing settlement/closing . . .)." JTR C5364-B.2.a(2). Ms. Slaughter maintains that this example describes her situation, so DFAS should have granted her an extension of eligibility for TQSE.

We conclude that DFAS's determination that this example did not fit Ms. Slaughter's situation was neither arbitrary, capricious, nor an abuse of discretion. While the agency might have decided differently, its choice was supportable. The settlement date which the employee had originally arranged was later than the date on which her authorized period of TQSE expired. We appreciate Ms. Slaughter's point that settlement was scheduled to occur promptly after the contract for the sale was signed. All in all, however, nothing out of the ordinary occurred during the entire period of TQSE eligibility. Taking into account the ten-day househunting trip, nearly forty days elapsed during which the employee could have been looking at houses and may well have done so before she signed that contract. While unanticipated problems did delay settlement, they did not occur until after that period was over, and they were not cited by Ms. Slaughter as justification for extending the period.

#### Decision

The claim is denied.

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STEPHEN M. DANIELS  
Board Judge