



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 9, 2016

CBCA 5521-RELO

In the Matter of LAWRENCE K. HOSKIN

Lawrence K. Hoskin, Fort Belvoir, VA, Claimant.

Lorena Sagocio, Chief, Centrally Managed Programs Branch, Air Force Personnel Center, Department of the Air Force, Joint Base San Antonio-Randolph, TX, appearing for Department of the Air Force.

LESTER, Board Judge.

Claimant, Lawrence K. Hoskin, challenges the refusal of the Department of the Air Force (Air Force) to extend temporary quarters subsistence expenses (TQSE) beyond the sixty-day period that it originally granted him.

Background

On or about April 22, 2016, the Air Force issued orders (amended on May 17, 2016) requiring Mr. Hoskin to relocate from Sembach, Germany, to Joint Base Andrews (JB Andrews) in Maryland. Pursuant to his orders, Mr. Hoskin was entitled to, among other things, sixty days of TQSE.

Mr. Hoskin arrived at JB Andrews on June 24, 2016, at which point he began his sixty-day TQSE period. Subsequently, on July 18, 2016, Mr. Hoskin signed a contract for the purchase of a house, with a closing date of August 24, 2016. Mr. Hoskin's TQSE was scheduled to end two days earlier, on August 22, 2016.

On August 18, 2016, Mr. Hoskin sent an email message to an Air Force representative asking the agency to grant him an additional eighteen days of TQSE, through and including September 9, 2016. He submitted a formal request for the extension to the Air Force Personnel Center (AFPC) on August 22, 2016, explaining that the closing date on the house that he was purchasing was two days after the end of the initial TQSE period that was scheduled to end on August 22, 2016, and that his household goods (HHG), which had been picked up in Germany in mid-June 2016, were not scheduled for delivery until September 7 or 8, 2016.

On August 23, 2016, the AFPC denied his extension request. In that denial, the AFPC mistakenly represented that Air Force policy only permitted twenty-one days of TQSE and that, under Air Force policy and guidance, it “may not be extended when the employee purchases a residence and accepts the seller’s closing date outside the initial [TQSE] period.”

Mr. Hoskin submitted a request on August 24, 2016, asking the AFPC to reconsider its denial and correctly noting that he had been authorized sixty (not twenty-one) days of TQSE and that his request was for an extension of an additional eighteen days beyond the sixty. On August 30, 2016, the AFPC denied Mr. Hoskin’s request for a TQSE extension beyond the sixty days that he had already been granted. In its written denial, the AFPC stated that it could not extend TQSE beyond sixty days when the employee purchases a residence and accepts the seller’s closing date outside of the initial TQSE period unless the employee can establish extenuating circumstances outside of the employee’s control. The deciding official indicated that “the justification [that Mr. Hoskin provided] does not present any reason beyond the employee[’s] control that warrant[s] an extension.”

On August 31, 2016, Mr. Hoskin again sought reconsideration of the agency’s decision. He indicated that the closing date was tentatively arranged by the mortgage company, not by him; that he could not arrange for HHG delivery until he knew when his closing date would be; and that both the closing and the HHG delivery dates were out of his control. The AFPC again denied reconsideration on September 4, 2016, reiterating that “a contract entered into with a known closing date outside the initial TQSE period may not be regarded as a compelling reason to extend TQSE.”

Mr. Hoskin sought further reconsideration on September 23, 2016, asserting that “we have done everything in our power to find a home and move into it as soon as we could” and that he had found a home within twenty days after starting his search on June 27, 2016, a time period that he viewed as reasonable. He represented that “[c]losing on the house was only within the control of the [mortgage company] and the closing agency.” On October 11, 2016, the AFPC again denied his request, indicating that, “[a]fter careful review of all the information, unfortunately the initial decision of not granting an extension still stands.”

Mr. Hoskin filed his claim with the Board on October 21, 2016.

Discussion

“TQSE reimbursement is an allowance provided to government employees as a matter solely within the discretion of their agencies and not as a benefit to which they are automatically entitled.” *Peter E. Godfrey*, CBCA 4940-RELO, 16-1 BCA ¶ 36,250, at 176,860. The Board has previously discussed the breadth of the discretion that agencies enjoy in deciding whether to extend TQSE and the limited role that we typically have in reviewing agency decisions not to extend TQSE:

TQSE “is intended to reimburse [a transferred employee] reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters.” *Zenaida Canaba*, CBCA 3993-RELO, [15-1 BCA ¶ 35,958, at 175,709] (quoting 41 CFR 302-6.3 (2014)). “This benefit is granted at the discretion of the administering agency.” *Id.* (citing 5 U.S.C. § 5724a(c)(1) (2012)); *see Marvin R. McGee*, GSBCA 15829-RELO, 02-2 BCA ¶ 32,002, at 158,114 (“Whether to authorize TQSE to a relocating employee is a determination which is wholly within the discretion of the agency involved.”). Similarly, once the agency has authorized TQSE, it retains broad discretion to decide whether “to grant extensions of TQSE,” and that exercise of discretion “will not be overturned unless that decision is found to have been arbitrary and capricious.” *Rajiv R. Singh*, GSBCA 16892-RELO, 06-2 BCA ¶ 33,418, at 165,672; *see McGee*, 02-2 BCA at 158,114.

Stephen J. Collier, CBCA 4395-RELO, 15-1 BCA ¶ 35,979, at 175,800.

Once the employee has been granted sixty days of TQSE, there are limits upon the agency’s ability to grant any further extension. While the Federal Travel Regulation (FTR) “allows an agency to authorize as many as 120 [consecutive] days of eligibility for reimbursement of actually-incurred TQSE,” the agency can only extend TQSE beyond sixty days if it makes “a determination that a compelling reason for continued occupation of temporary quarters exists.” *Stephen J. Collier*, 15-1 BCA at 175,800 (quoting *Kevin D. Reynolds*, CBCA 2201-RELO, 11-1 BCA ¶ 34,756, at 171,061 (citing 5 U.S.C. § 5724a(c) (2006))); *see* 41 CFR 302-6.104 (2015) (agency may extend actual-expense TQSE beyond sixty days only if it “determines that there is a compelling reason for [employee] to continue occupying temporary quarters”). The FTR defines the “compelling reasons” necessary to extend TQSE beyond the first sixty-day period as “an event that is beyond your control and is acceptable to your agency.” 41 CFR 302-6.105. Examples of such compelling reasons include an employee’s inability to “occupy [his] new permanent residence because of

unanticipated problems (e.g., delay in settlement on the new residence, or short-term delay in construction of the residence),” his inability “to locate a permanent residence which is adequate for [his] family’s needs because of housing conditions at [his] new official station,” or delayed HHG transportation and/or delivery resulting from “strikes, customs clearance, hazardous weather, fires, floods or other acts of God, or similar events.” *Id.* 302-6.105(a), (b), (c); *see* Joint Travel Regulations (JTR) 5802-B.2.a. “The authorizing official has considerable discretion to determine what constitutes a compelling reason to support an extension,” and the Board cannot overturn that discretionary determination unless it is arbitrary, capricious, or contrary to law. *Charles J. Shedrick*, CBCA 5066-RELO, 16-1 BCA ¶ 36,431, at 177,588.

In the circumstances here, we have no basis for finding that the agency acted arbitrarily or capriciously in finding no compelling reason for extending Mr. Hoskin’s TQSE for an additional eighteen days. Even if Mr. Hoskin had no control over the mortgage company’s selection of the closing date, an employee has no right to a TQSE extension – any extension is discretionary with the agency. The agency acted well within its discretion in finding that the circumstances here were not compelling and in deciding not to grant an extension. Although there may be circumstances in which an agency could find compelling (for purposes of a TQSE extension beyond sixty days) a mortgage company’s or seller’s demand that closing on a property occur beyond an existing TQSE period, it would likely require significant evidence from the employee that he or she made extensive efforts to move the closing to within the scheduled TQSE period and that he or she was thwarted in those efforts. Mr. Hoskin presented no such evidence to the Air Force. The situation here is very similar to that in *Melinda Slaughter*, CBCA 764-RELO, 07-2 BCA ¶ 33,633, in which the employee’s closing was scheduled for a time after her TQSE was to expire, which the agency was permitted to find was not a compelling reason for a further TQSE extension beyond the first sixty-day period:

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 [the employee’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.

Id. at 166,579.

Mr. Hoskin also complains that, in its first denial of his TQSE extension request, the agency incorrectly indicated that he was only entitled to twenty-one days of TQSE, rather than the sixty days that he had already been given. The agency later corrected that error,

however, and it never rescinded or attempted to rescind the sixty-day TQSE period that he had previously been granted. The agency's subsequent decision not to extend his TQSE was based upon a correct understanding that he had been given sixty days of TQSE, and the agency understood that fact when it found no compelling reason for a further extension. Any initial error in the agency's decision did not prejudice Mr. Hoskin, and it provides no basis for questioning the agency's ultimate decision based upon the correct facts. *See Arizmendi v. Office of Personnel Management*, No. 00-3316, 2000 WL 1688160, at *2 (Fed. Cir. Nov. 9, 2000) ("OPM's mistake did not prejudice Ms. Arizmendi in any way and cannot be the basis for granting benefits for which she is not statutorily eligible.") (non-precedential).

Decision

For the foregoing reasons, we must deny Mr. Hoskin's request for a TQSE extension.

HAROLD D. LESTER, JR.
Board Judge