



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 5, 2007

CBCA 510-RELO

In the Matter of KOLIN A. VAN WINKLE

Kolin A. Van Winkle, Mentor, OH, Claimant.

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

GILMORE, Board Judge.

In this matter, the Department of Veterans Affairs (VA) denied the claim of Dr. Kolin A. Van Winkle (Dr. Van Winkle or claimant) for temporary quarters subsistence expenses (TQSE) for the rental of a home that he had also entered into a contract to purchase. He contended that the home was being occupied as his family's temporary quarters, while he and his wife were resolving certain issues with the builder. He claimed that, during the rental period, his occupancy was only on a temporary basis because he and his wife did not know whether they were actually going to purchase the home. He contended that it did not become their permanent residence until fifty days after they moved in, when the parties signed the final addendum to the sales agreement. The VA determined that the home being rented was the claimant's permanent home and denied reimbursement of the claimed TQSE. Because the VA had advanced Dr. Van Winkle \$4713.95 over and above the amount it later determined to be allowable expenses, the VA sought repayment of the \$4713.95 from Dr. Van Winkle. Based upon the facts presented, we affirm the determination of the agency that the quarters claimed by Dr. Van Winkle as temporary quarters were, in fact, his permanent quarters.

Background

On January 12, 2006, Dr. Van Winkle was appointed Supervisory Counseling Psychologist/Vocational Rehabilitation and Employment Officer at the VA's Cleveland,

Ohio, office. As a result of the appointment, he planned to relocate his family from Maine to the Cleveland area. He was to report to work on February 21, 2006. On a house-hunting trip to Cleveland from January 29 to February 9, 2006, Dr. Van Winkle and his wife found a home they wished to buy. They entered into a contract to purchase the home at that time. Because the closing date was projected to be April 12, 2006, the Van Winkles entered into an agreement with the seller entitled, "Buyer's Occupancy before Title Transfer." Under that agreement, the Van Winkles agreed to pay the seller \$12,000 to occupy the premises prior to settlement. The addendum to that agreement stated that "[s]eller agrees to allow buyer occupancy beginning on 2/19/06 after all contingencies removed."

Dr. Van Winkle's "Travel Authority for Permanent Duty" issued by the VA included an authorization for TQSE. The Van Winkles were concerned that the price the seller was asking for rent was relatively high. To address this concern, the Van Winkles, with their real estate agent present, called the VA travel counselor to inform her about the rental and ask whether the amount was within the TQSE spending limits. The VA travel counselor then called her supervisor to ask her opinion about the rental price. The VA travel counselor, her supervisor, and the Van Winkles have different versions of the conversations that took place on this issue. The Van Winkles contend that, although their foremost concern was the rental price, they did inform the VA travel counselor that they were renting the home they were purchasing from the builder/owner until they could finalize the sale. The record is not clear as to what the VA travel counselor understood from the conversation with Dr. Van Winkle. When asked by the VA accountant to state whether she agreed with Dr. Van Winkle's version, she just stated "No" without elaborating. Her supervisor, when questioned by the VA accountant, stated that the conversation she had with the VA travel counselor was only about the rental amount and whether it was within the spending limit. The Van Winkles' real estate agent's affidavit is somewhat ambiguous. She stated that she witnessed the Van Winkles' call to clarify renting the house they were intending to purchase, but did not state what she heard them say. She only stated that she "overheard" the discussion about whether the rental amount was appropriate and within the spending limits.

On February 10, 2006, the VA travel counselor emailed Dr. Van Winkle that she originally understood that he needed temporary housing for himself, because it would take thirty to sixty days for closing on a house, but now she understood that his family was coming with him, and that she needed to make an amendment to his travel authorization. There was no mention about the location of the temporary quarters in this email. When Dr. Van Winkle emailed her back, that same day, he also did not discuss the home he was renting and only inquired about an advance he had requested, advising that he needed to pay \$7000 prior to his occupancy on February 19, 2006. The money to cover the first month of rent was advanced to Dr. Van Winkle.

On February 20, 2006, Dr. Van Winkle, his wife, and four children moved into the home he was purchasing. The household goods from their former residence in Maine were moved into the home at that time. The Van Winkles rented the home from the builder under the occupancy agreement for fifty days, from February 20 through April 11, 2006. During this time, the Van Winkles did not look for another home to purchase. The final addendum to the sales agreement was signed on April 11, 2006, and addressed the buyer's payment for upgrades to the property, landscaping, and other "punch list" items to be completed by the seller. In the addendum, the Van Winkles agreed that the seller could complete a number of the itemized repairs after the closing date. They closed on the home on April 13, 2006. The VA's Financial Services Center suspended the release of further funds when the auditors discovered that the home Dr. Van Winkle had rented was the same home he had purchased. They determined that he was not entitled to TQSE during the rental period.

Discussion

The weight of the evidence does not establish that the VA travel representatives knew that the Van Winkles were renting the home they were purchasing. In any event, the determination of whether the home Dr. Van Winkle was renting was his temporary or permanent residence does not turn on whether Dr. Van Winkle told the VA that he was renting from the builder for a temporary time. Whether a residence is temporary or permanent turns on an examination of several factors, not on a single factor. *Keith E. Kuyper*, GSBCA 15839-RELO, 02-2 BCA ¶ 31,983. The principal determination is the intention of the employee at the time the living arrangement was entered into. *Steven F. Bushey*, GSBCA 15289-RELO, 01-1 BCA ¶ 31,291.

The Federal Travel Regulation (FTR) at 41 CFR 302-6.1 (2005), applicable at the time, defines "temporary quarters" as "lodging obtained for the purpose of temporary occupancy from a private or commercial source." With respect to whether a residence is temporary or permanent, the FTR provides the following guidance:

In determining whether quarters are "temporary", [the agency] should consider factors such as the duration of the lease, movement of household effects into the 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.

41 CFR 302-6.305. *See generally Charles F. Ruerup*, GSBCA 15955-RELO, 03-1 BCA ¶ 32,227.

Here, Dr. Van Winkle was renting the home he was in the process of purchasing. He signed the sales agreement on February 8, 2006. Because the closing date was projected to be April 12, 2006, the seller agreed to allow him to occupy the property prior to title transfer if contingencies were removed. The evidence does not support Dr. Van Winkle's contention that he was renting on a temporary basis because he and his wife did not know whether they would actually purchase the home until they signed the final addendum on April 11, 2006. There is no documentation showing that the Van Winkles had placed any contingencies on the purchase of the property. To the contrary, he moved his family and his household goods into the home on February 20, 2006, the beginning of the rental period, and was not looking for another property to purchase. He also proposed paying for certain upgrades to the property during the rental period, and agreed that the seller could complete a number of corrective items after the closing date. The weight of the evidence establishes that, at the time of occupancy, Dr. Van Winkle intended the home to be his permanent residence. He was simply renting the premises while handling matters and resolving issues necessary to go to closing, which is normal in the process of purchasing a home.

Decision

The VA acted reasonably in determining that the home that Dr. Van Winkle rented and purchased was intended to be his permanent residence at the time of entering into the occupancy/rental arrangement. The claim is denied.

BERYL S. GILMORE
Board Judge