



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 18, 2008

CBCA 1272-RELO

In the Matter of DONALD F. STRIKER

Donald F. Striker, Glen Jean, WV, Claimant.

C. Bruce Sheaffer, Comptroller, National Park Service, Department of the Interior, Washington, DC, appearing for Department of the Interior.

BORWICK, Board Judge.

In this matter, Mr. Donald F. Striker, claimant, an employee of the Department of the Interior's National Park Service (agency), challenges the agency's denial of reimbursement for a third and fourth period of temporary quarters subsistence expenses (TQSE), incurred as a result of his permanent change of station (PCS). The agency denied reimbursement upon voucher examination by the agency's Comptroller even though senior agency officials had approved the extended periods of TQSE. We grant the claim. We conclude that senior agency officials reasonably and lawfully exercised their discretion provided in the Federal Travel Regulation (FTR) in determining that compelling circumstances justified the additional periods of TQSE. The agency, having in the first instance properly authorized claimant to incur the expenses, could not upon subsequent voucher examination reverse that authorization.

Background

On or about April 9, 2007, the agency promoted claimant and authorized his PCS from Larimer, Colorado, to Fayette, West Virginia. Among other benefits, the agency granted claimant reimbursement of TQSE for an initial thirty-day period, with prior written approval required for additional thirty-day increments of TQSE. Claimant's duty reporting date was April 29, 2007. The first thirty-day period of TQSE ran from April 28 through May 27.

On May 9, 2007, claimant signed a contract to purchase a house in Hinton, West Virginia, near his new duty station. The contract of sale contemplated a settlement date at the end of July. Claimant explains that the seller was a high school teacher and single mother with four children. This individual advised claimant in May that she would be unable to vacate the house before July 30 due to the necessity of her children finishing school and the need to find a new home. Unoccupied homes were rare in this rural area.

Claimant shared this information with the agency's Deputy Regional Director, who agreed to an additional thirty days of TQSE. On May 29, claimant requested that she approve a second thirty-day period of TQSE, which ran from May 28 through June 26. The Acting Deputy Regional Director approved the request on May 31.

On June 22, claimant requested approval of a third thirty-day period of TQSE, from June 26 through July 26. Closing on the house was then scheduled for July 30, but claimant and the seller had moved the closing date to July 5 so that the seller could raise money to purchase a house. Closing occurred on that date. The Acting Deputy Regional Director approved this request on July 25.

On July 24, claimant sought from the Acting Deputy Regional Director a fourth period of TQSE, from July 27 through August 14, advising that the residents could not move until the next week and that claimant expected to be able to occupy the house on August 14. On July 27, the Acting Deputy Regional Director approved this request. Apparently, claimant did not advise the Acting Deputy Regional Director of the July 5 settlement date when the Acting Deputy Regional Director had approved the extension requests for the third (June 26-July 26) and fourth (July 27-August 14) periods, although he did advise her of the difficulties encountered by his seller in finding a new house.

Relying on the above approvals, claimant incurred expenses of \$5564.80 for the third period of TQSE and \$2490.28 for the fourth period of TQSE. Claimant submitted reimbursement vouchers for those amounts. Claimant states that he did not receive rent-back reimbursements from the seller during the period the seller occupied the house either before or after closing the sale.

After claimant submitted the voucher, the agency's Comptroller, in contradiction of the Acting Deputy Regional Director's approval of the third and fourth TQSE periods, denied claimant reimbursement for those periods. The Comptroller maintained that claimant had not established compelling circumstances warranting reimbursement. The Comptroller was particularly troubled by the fact that claimant and his seller had moved the settlement date from July 30 to July 5, without advising the Acting Deputy Regional Director.

Discussion

The FTR provides:

How long may I be authorized to claim actual TQSE reimbursement?

Your agency may authorize you to claim actual TQSE in increments of 30-days or less, not to exceed 60 consecutive days. However, if your agency determines that there is a compelling reason for you to continue occupying temporary quarters after 60 consecutive days, it may authorize an extension of up to 60 additional consecutive days. Under no circumstances may you be authorized reimbursement for actual TQSE for more than a total of 120 consecutive days.

41 CFR 302-6.104 (2007).

The FTR further provides:

What is a “compelling reason” warranting extension of my authorized period for claiming an actual TQSE reimbursement?

A “compelling reason” is an event that is beyond your control and is acceptable to your agency. Examples include, but are not limited to when:

(a) Delivery of your household goods to your new residence is delayed due to strikes, customs clearance, hazardous weather, fires, floods or other acts of God, or similar events.

(b) You cannot occupy your 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).

(c) You are unable to locate a permanent residence which is adequate for your family’s needs because of housing conditions at your new official station.

(d) Sudden illness, injury, your death or the death of your immediate family member;
or

(e) Similar reasons.

41 CFR 302-6.105.

A decision as to whether circumstances present compelling reasons is left to the sound discretion of agency authorizing officials and will not be overturned unless the exercise of that discretion is contrary to law or arbitrary or capricious. *Donald E. Coney*, CBCA 702-RELO, 07-2 BCA ¶ 33,605, at 166,429, citing *Vicky Lynn Tucci*, GSBCA 16826-RELO, 06-2 BCA ¶ 33,366; *Charles A. Nalley III*, GSBCA 16798-RELO, 06-1 BCA ¶ 33,263; *John D. Stringfellow*, GSBCA 16268-RELO, 04-1 BCA ¶ 32,616; *Nora L. Donohue*, GSBCA 15687-RELO, 02-1 BCA ¶ 31,780).

Our predecessor board in deciding these matters, the General Services Board of Contract Appeals (GSBCA), recognized that circumstances causing a delay in occupancy of a permanent residence--such as the inhabitable condition of the residence-- will justify an extension of the TQSE period. *Floyd S. Wiginton*, GSBCA 15583-RELO, 01-2 BCA ¶ 31,605. In *Scott E. English*, GSBCA 15650-RELO, 02-1 BCA ¶ 31,821, the GSBCA sustained the decision of agency authorizing officials, over the objections of the agency finance officers, in approving the maximum allowable extension of the TQSE reimbursement period due to a seller's inability to vacate the house so that the transferred employee could occupy it. The board noted that local authorizing officials are often in the best position to make such discretionary determinations.

Finally, in *Andrew W. Frank*, GSBCA 16919-RELO, 06-2 BCA ¶ 33,364, the GSBCA held that it was improper for agency finance officials to deny authorized reimbursement of TQSE after the agency authorizing officials had lawfully authorized the extension of the TQSE period and the employee had incurred the expenses in reliance upon the authorization. We apply those precedents here.

In this case, properly authorized officials, the agency's Deputy Regional Director and the Acting Deputy Regional Director, authorized the extensions of the TQSE period. Claimant fully informed those officials of the reasons why claimant could not occupy the house he had purchased from the seller. Those officials exercised their discretion in a reasoned manner, applying criteria for the exercise of that discretion which case law upholds as acceptable and reasonable. The matter of the early settlement date which bothers the Comptroller in this case is a classic red herring.

Finally, the Comptroller maintains that the voucher and accounting technician's position description allow a voucher technician, when auditing and processing vouchers, to ensure compliance with travel regulations and to determine compliance with payment

requests. If the agency wishes to condition the senior authorizing officials' exercise of discretion to approve TQSE extensions upon the prior approval of voucher technicians, it is certainly free to establish such a policy. It did not do so in this case; instead, the agency through authorizing officials approved the additional TQSE periods, then the agency through voucher examination reneged on that approval after the employee incurred the expenses. It may not engage in such a practice. *Frank.*

For the reasons below, the Board grants the claim. The agency denied claimant reimbursement for TQSE for the third and fourth periods in their entirety. Claimant is only entitled to reimbursement of allowable TQSE under the FTR. The matter is returned to the agency for the agency's calculation of allowable TQSE expenses for the third and fourth periods of TQSE.

ANTHONY S. BORWICK
Board Judge