



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 3, 2009

CBCA 1648-RELO

In the Matter of JUAN G. BERNAL

Juan G. Bernal, Woodbridge, VA, Claimant.

Debra J. Murray, Chief, Travel Section, National Finance Center, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

McCANN, Board Judge.

Juan G. Bernal (claimant or Mr. Bernal) has submitted a request for a review of the determination by Customs and Border Protection, Department of Homeland Security (Customs, or the agency) that he was not entitled to temporary quarters subsistence expenses (TQSE) pursuant to his permanent change of duty station (PCS) move from El Paso, Texas, to Washington, D.C. For the reasons set forth below, we sustain the agency's determination.

Background

Claimant was relocated in the interest of the Government from El Paso, Texas, to Washington, D.C. His orders were signed on January 8, 2009, and they required that he report to his new duty station on March 1, 2009. Claimant was admitted into the Guaranteed Home Sale Program (GHSP) and received an offer on his house, which he rejected. Claimant was authorized a ten-day house hunting trip and sixty days of TQSE. Claimant requested and was approved for two thirty-day extensions of his TQSE for a total of 120 days.

Claimant and his wife went on a house hunting trip and discovered that, for a number of reasons including the quality of its schools, they liked the Lake Ridge subdivision of

Woodbridge, Virginia. Claimant attempted to obtain temporary housing in the Lake Ridge area, but found that no one was willing to lease a house to him for less than a year. Short term rentals in other areas were available. Claimant did not want to force his children to change schools once he had purchased a permanent residence, so he felt he needed to rent a house in the Lake Ridge area. He signed a one-year lease for a four bedroom house in Lake Ridge, and moved into the house on March 3, 2009. His household goods were delivered on March 3, 2009. Even though he signed a one-year lease, claimant asserts that he only intended to occupy the house temporarily, until he could buy a residence in Lake Ridge. Claimant contends that he was willing to incur whatever penalties were associated with the breaking of the one-year lease.

Claimant contends that he was advised by his relocation management company, which was assigned to him by Customs, that he could enter into a long term lease without it having a negative effect on his reimbursement and relocation allowances. He also contends that he confirmed the accuracy of this advice with the National Finance Center. There is nothing in the record reflecting the advice given by the relocation company or the National Finance Center. Nothing in the record, other than his assertion, supports the contention that claimant was told that he could enter into a one-year lease for a house and not have that affect whether he was entitled to TQSE.

Claimant initially tried to sell his house in El Paso and tells us he needed to do so before he could purchase a house in Lake Ridge. At the same time, claimant turned down the offer for his house made by the GHSP, which he contends was woefully inadequate and would have forced him to take a large loss on the property. In an undated letter to the Board, received on September 8, 2009, Mr. Bernal advises that the El Paso house is now rented. He states that he is trying to salvage his investment in that house by renting it out in the hope of the real estate market improving in the years to come. Customs indicates that he had been marketing his house at a price substantially in excess of its appraised value.

Discussion

When the Government transfers an employee from one permanent duty station to another in the interest of the Government, the Government may pay the subsistence expenses incurred by the employee while occupying temporary quarters, provided certain requirements are met. 5 U.S.C. § 5724a(c) (2006). The Federal Travel Regulation (FTR) implements this statute.

The FTR defines “temporary quarters” as lodging obtained for the purpose of temporary occupancy from a private or commercial source. 41 CFR 302-6.1 (2008). The purpose of the TQSE allowance is to reasonably reimburse an employee for subsistence

expenses incurred when it is necessary for the employee to occupy temporary lodging while arranging for permanent quarters at the new duty station. 41 CFR 302-6.1 -6.3; *Shawn P. Crump*, CBCA 971-RELO, 08-1 BCA ¶ 33,781.

Pursuant to the FTR, the agency is to ensure that the TQSE allowance is used only for so long as is necessary until the employee can move into permanent quarters. 41 CFR 302-6.300. When making a determination of whether quarters are temporary the agency must “consider factors such as the duration of the lease, movement of the household effects into the quarters, the employee’s expression of intent, attempts to secure a permanent dwelling and the length of time the employee occupies the dwelling.” 41 CFR 302-6.305. There exists no precise definition of when quarters should be classified as temporary. Such a determination should revolve around the employee’s intention at the time he leased the quarters. *Stephen A. Monks*, GSBKA 15029-RELO, 00-1 BCA ¶ 30,650 (1999).

In this case it seems that Mr. Bernal did express an intent to occupy his rented house in Lake Ridge temporarily and not permanently. However, simple expressions of intent in the face of actions to the contrary will not suffice to prove the lodging temporary. Here, Mr. Bernal signed a one-year lease without securing any means of breaking the lease. He received all of his household goods when he moved into the house, and he has been living there since early March 2009, over nine months.

Claimant’s assertions that he intended to break the lease, absorb the financial consequences, purchase a house in the same locale, and move in, are belied by his actions. Claimant, at first, indicated that he would be buying a house in Lake Ridge as soon as he could afford it. He indicated that he would buy after his house in El Paso, which he alleged he was aggressively marketing, sold. However, in his most recent correspondence to the Board, received September 8, 2009, he indicates that he has rented his house in El Paso in the hopes of selling it when the market in El Paso improves. This statement clearly contradicts his earlier assertion that he was aggressively marketing his El Paso house. He contends that the rental house was too small and that his small son and daughter were forced to occupy the same bedroom. However, as Customs has pointed out, the Lake Ridge house was a four bedroom house. Thus, his claim that the house was too small is highly questionable. Likewise, claimant’s assertion that he was misled by the management company and the National Finance Center is unsupported. Accordingly, we afford his assertion no consequence. Even if his assertion was verified, claimant cannot rely on erroneous advice. *Ken S. Stoner*, CBCA 945-TRAV, 08-1 BCA 33,818.

In this case, the length of the lease, the delivery of his household goods when he moved in, and the nine-month occupancy demonstrate that the rental house in Lake Ridge is not and never was temporary lodging. Further, claimant’s renting out of his house in El

Paso until the market improves further shows that claimant has no likelihood of purchasing a home in Lake Ridge any time soon. Claimant's assertions that the rental was temporary and that he intended to purchase and move to permanent housing when his financial circumstances permitted is simply too vague to overcome the reality here. *Keith E. Kuyper*, GSBCA 15839-RELO, 02-2 BCA ¶ 31,983. The rental of the Lake Ridge property was not temporary and claimant is not entitled to any TQSE for the period after he moved into it. Further, to the extent that the house was viewed as temporary quarters, claimant has not shown, in a manner satisfactory to the agency, that he initially intended to occupy the quarters temporarily. Thus, TQSE is not appropriate from the date of occupancy. 41 CFR 302-6.300, -6.14; *Janet L. Hughes*, GSBCA 13731-RELO, 97-1 BCA ¶ 28,691 (1996).

Decision

The agency correctly applied the regulations to the facts of this case. The claim is denied.

R. ANTHONY McCANN
Board Judge