



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 26, 2010

CBCA 1882-RELO

In the Matter of EVERETT L. BUTLER

Renee Lias, Castro, TX, appearing for Claimant.

Rachael K. House, Associate Counsel, Space & Missile Systems Division, Defense Contract Management Agency, Carson, CA, appearing for Department of Defense.

WALTERS, Board Judge.

Claimant, Everett L. Butler, has requested reimbursement of extended temporary quarters subsistence expenses (TQSE) and extended household goods (HHG) storage fees, plus attorney fees and costs, in the total amount of \$35,000. For the reasons explained below, we find the claim to have some merit, but return the matter to the agency to determine the amount to be reimbursed.

Background

In June 2009, claimant, who had been employed at the Patuxent River Naval Air Station, Maryland, assumed a new position for the Defense Contract Management Agency (DCMA), Oakland, California. In connection with the permanent change of station (PCS) travel orders issued to him for his move from Maryland to California, claimant was authorized reimbursement for actual TQSE for a period of thirty days. (Claimant elected to be reimbursed based on actual expenses rather than a fixed amount of TQSE.) Claimant was also authorized shipment of his household goods (HHG) and storage of those goods for up to sixty days. His orders envisioned the possibility of DCMA granting extensions of HHG storage eligibility for additional periods of sixty days each, up to a total of 180 days, and

extensions of TQSE eligibility for additional periods of thirty days each, up to a total of 120 days. Any request for such an extensions had to include written justification and endorsement of the employee's supervisor, including a description of the employee's efforts to secure permanent quarters at the new duty station. Extensions could be approved by DCMA headquarters.

Claimant made a house hunting trip (HHT) to Oakland from June 9 through 16, 2009, and began incurring TQSE expenses on June 20, 2009. Within a month of entering temporary quarters, claimant asked his supervisor for an extension of his period of eligibility for TQSE. He noted in an e-mail message that he had been "looking for permanent quarters very diligently and . . . have found adequate housing but it will not be available until the end of September." The supervisor endorsed his extension request and passed it on for processing.

When claimant made written inquiry in early September, he was told that a written request, justification, and supervisor's approval had not been submitted to the proper authority. Claimant so informed the supervisor, requesting that, in addition to extending his TQSE eligibility for the full 120 day period permitted, the period of eligibility for reimbursement of the costs of storing his HHG also be extended. He reported that he would be "moving to a permanent residence on October 18." On September 23, the supervisor again conveyed his approval in writing, stating: "It has been difficult to locate adequate housing in that geographic area [where claimant was assigned]."

The request was sent to DCMA headquarters, where a management analyst denied it. He determined that, because the request was submitted after the initially-approved periods of eligibility for TQSE and storage of HHG had expired, it arrived too late to be considered. He also noted a "general policy" that TQSE should be denied when an employee has been reimbursed for HHT costs prior to moving, as claimant had been.

At this point, a Navy captain intervened and asked a high-ranking DCMA human resources official to reconsider the agency's denial of the claim. This official told others in the agency, "[I]f there's a way to work this legally, let's find it." He was advised, however, that, based on rulings by our predecessor, the General Services Board of Contract Appeals, he was legally obligated to deny reconsideration. The official followed that advice.

Unfortunately, the advice was misguided. The cases cited, *Alex L. Rowe*, GSBCA 14479-RELO, 98-2 BCA ¶ 29,919, and *Joel Williams*, GSBCA 16437-RELO, 04-2 BCA

¶ 32,769, have no relevance to this one. Those cases describe restrictions on agencies' ability to modify travel orders retroactively. In *Rowe*, after citing a rule that orders may generally not be modified after travel has been performed, the board actually permitted reimbursement of storage costs. In *Williams*, the board applied the established rule that once an employee elects TQSE under one method (actual expenses or fixed amount), his orders may not be changed to the other method.

The preliminary determination of the management analyst as to the claim makes no more sense than the advice furnished to the human resources official. We are unable to find in the Joint Travel Regulations (JTR) any requirement that if an employee requests an extension of the period of eligibility for TQSE or HHG storage, he must do so within the period prescribed in his original travel orders. *See* JTR C5364, C5190. Even if such a requirement exists, it would not affect detrimentally claimant's request for an additional period of TQSE, for that request was made within the prescribed period. We also note that the general policy of the JTR as to the relationship between TQSE and HHT reimbursement does not preclude authorization of TQSE when a HHT has been taken. The policy merely says that if, after an employee has made a HHT, temporary lodging is justified, "only a necessary TQSE period" should be permitted. JTR C5356-D.

Claimant's supervisor determined that claimant was unable to locate suitable, permanent housing in the area of his new duty station because of housing conditions there. According to the JTR, this is an acceptable justification for extending the periods of eligibility for both TQSE and storage of HHG. JTR C5364-B.2.a(3), C5190-B.2.b. The record makes clear that the DCMA official who was asked to reconsider the agency's denial of claimant's request would have granted the request on this ground, if not for the incorrect advice he received. We conclude that the official's desire to grant the request should be honored.

It is not clear from the record, however, how much of the instant \$35,000 claim represents additional TQSE and HHG storage costs and how much represents attorney fees and associated costs, for which there is no authority for either the Board or the agency to provide relief. The Board's authority under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006), does not extend to cases involving travel and relocation such as this one. Also, if more than thirty days of actual TQSE is authorized, as would be the case here, the regulations call for the actual number of days for which HHT expenses were reimbursed to be subtracted from the first thirty days of reimbursable TQSE. JTR C5372-A.1.

Decision

Accordingly, although we find the present claim to have merit, we return the matter to the agency to determine the amount due, providing relief solely for claimant's extended actual TQSE and HHG storage costs.

RICHARD C. WALTERS
Board Judge