



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 29, 2011

CBCA 2320-RELO

In the Matter of BRIAN R. WEEKS

Brian R. Weeks, Washington, DC, Claimant.

Christopher Hunt, Unit Chief, Travel and Transfer Payment Unit, Federal Bureau of Investigation, Washington, DC, appearing for Department of Justice.

GILMORE, Board Judge.

Claimant, Brian R. Weeks, an employee of the Federal Bureau of Investigation (FBI or agency), accepted a permanent change of duty station from Winchester, Virginia, to Washington, D.C., in May 2010. He was required to report to his new duty station on August 20, 2010. His travel orders authorized sixty days of temporary quarters subsistence expenses (TQSE). In preparation for his move, he listed his home in the Winchester area for sale and made a house hunting trip to find a new home near his new duty station. On July 19, 2010, claimant entered into a purchase contract for a home in Fredericksburg, Virginia. Because claimant needed the proceeds from the sale of his home at his old duty station to purchase the new home, the sellers agreed to rent the home to claimant and his family until they closed on the new home. Claimant and his family moved into the home that they contracted to purchase on August 9, 2010. Their household goods were delivered to the home on September 27, 2010. Claimant closed on the sale of his home at his old duty station on October 27, 2010. On this same date, claimant requested approval of an additional thirty days of TQSE, stating that the purchase of his new home had been delayed and he now expected to close on that home on November 18, 2010.

On October 28, 2010, the FBI's budget analyst handling claimant's request asked the FBI's Assistant General Counsel whether an employee can be reimbursed for TQSE if he is renting the house he is under contract to purchase. The Assistant General Counsel answered

that same day, advising that if the employee entered into a purchase agreement for a home and then rented that same property, this demonstrated that the employee intended the home to be his permanent residence. He advised that once the employee is in permanent housing, TQSE are no longer authorized or appropriate. Claimant was then advised that his request for a thirty day extension of TQSE was disapproved. The reply did not address whether claimant was entitled to subsistence expenses during his initial sixty days in the rental property.

On November 9, 2010, the sellers of the home in Fredericksburg and claimant and his wife signed a release of contract of purchase because claimant was unable to secure the required financing. Claimant then sought payment for subsistence expenses for the first sixty days that he stayed in the Fredericksburg property, stating that his stay in the property was only temporary and thus TQSE should be allowed. He stated that he and his family had to incur the additional expense of moving from the Fredericksburg property to the home they are now renting elsewhere.

Claimant's request for TQSE was denied. Claimant was advised that because he had entered into a purchase contract for the home in Fredericksburg prior to renting that same home, he intended the home to be his permanent residence, and did not intend to occupy it temporarily.

Discussion

When an agency transfers an employee from one permanent duty station to another, it may pay, within certain limitations and in accordance with regulation, the subsistence expenses the employee and his or her family incur while occupying temporary quarters. 5 U.S.C. § 5724a(c) (2006). The Federal Travel Regulation (FTR) implements the statute. The FTR defines "temporary quarters" for purposes of TQSE as lodging obtained for the purpose of temporary occupancy from a private or commercial source. 41 CFR 302-6.1 (2010). The purpose of providing TQSE is to reasonably reimburse an employee for subsistence expenses incurred when it is necessary for the employee to occupy temporary quarters while arranging for permanent quarters at the new duty station. When making a determination of whether quarters are temporary or permanent, the agency must consider such factors as duration of the lease, movement of household goods 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. Such a determination should revolve around the employee's intention at the time the employee occupies the quarters. *E.g.*, *Stephen A. Monks*, GSBICA 15029-RELO, 00-1 BCA ¶ 30,650 (1999).

This Board has not previously addressed entitlement to TQSE under these particular circumstances. However, the Comptroller General, who adjudicated relocation claims prior

to the General Services Administration Board of Contract Appeals and this Board, decided, under identical facts, that when an employee rents a home he had contracted to purchase, although the employee ultimately did not purchase the home because he could not obtain the required financing, the home was his permanent residence due to his intent to purchase at the time he moved in. *Kenneth O. Dudley*, B-205394 (Apr. 26, 1982); *Jon W. Cain*, B-200082 (Feb. 25, 1981).

Here, when claimant occupied the dwelling, he intended it to be his permanent residence. Entitlement to TQSE ended at midnight of the day preceding the occupancy. See 41 CFR 302-6.108.

This claim is denied.

BERYL S. GILMORE
Board Judge