



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 7, 2013

CBCA 3040-RELO

In the Matter of MARC J. SHAW

Marc J. Shaw, Anacortes, WA, Claimant.

MaryLee Hensley, Director, Enterprise Standards and Solutions, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

KULLBERG, Board Judge.

The Department of Defense (DoD) forwarded this matter to the Board on behalf of the claimant, Marc J. Shaw, after denying his claim for temporary quarters subsistence expenses (TQSE). DoD contends that Mr. Shaw cannot receive TQSE because he did not live in temporary quarters. Mr. Shaw argues that the home he has owned at his current duty station should be deemed his temporary quarters while he made repairs and waited for the delivery of his household goods. For the reasons stated below, the claim is denied.

Background

By orders dated August 23, 2011, Mr. Shaw was transferred from Naval Support Activity, Souda Bay, Crete, Greece, to Naval Air Station (NAS) Whidbey Island, Washington. Mr. Shaw already owned a home at NAS Whidbey Island, which he had rented while overseas. Three months before his transfer, Mr. Shaw asked his human resources department whether he could receive TQSE while he lived in his home in order to make repairs and wait for the delivery of his household goods (HHG). Mr. Shaw was advised that he could receive TQSE, and his orders authorized a fixed amount of TQSE for thirty days.

On May 21, 2012, Mr. Shaw submitted his claim for TQSE for thirty days. By letter dated August 29, 2012, DoD denied Mr. Shaw's claim for TQSE because he had moved into his permanent residence immediately after reporting to his new duty station. DoD forwarded Mr. Shaw's claim to this Board by letter dated September 27, 2012.

Discussion

The issue in this matter is whether Mr. Shaw can receive TQSE after moving into the home he already owned at his new duty station, NAS Whidbey Island. The Federal Travel Regulation (FTR), which applies to Mr. Shaw, states that the "TQSE allowance is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters." 41 CFR 302-6.3 (2011) (FTR 302-6.3). TQSE ends "[t]he day preceding the day [the employee] and/or any member of [his or her] immediate family occupies permanent residence quarters." *Id.* 302-6.108. The Joint Travel Regulations (JTR), which also apply to Mr. Shaw, provide that temporary housing must be occupied in order to receive a fixed amount of TQSE. JTR C5384-A.1.

Mr. Shaw, consequently, can only receive TQSE if the home he already owned is deemed to have been for some period of time his temporary quarters after his arrival at NAS Whidbey Island. "Applicable regulations establish a practical method for deciding whether an employee's quarters, upon his reporting to a new duty station, are, for purposes of TQSE eligibility, temporary or permanent." *Charles F. Ruerup*, GSBCA 15955-RELO, 03-1 BCA ¶ 32,227, at 159,356. The JTR state the following:

The AO [(approving official)] may determine that temporary lodging initially occupied that eventually become an employee's permanent private sector housing was temporary lodging for a specific time period after considering:

- a. Lease duration,
- b. HHG movement into the lodging,
- c. Lodging type,
- d. Expressions of intent,
- e. Attempts to secure permanent private sector housing, and
- f. Time length the employee occupied the lodging.

JTR C5354-B.2.

Mr. Shaw argues that he is entitled to receive TQSE under JTR C5354, but there is no evidence that he ever intended to live temporarily in the home that he already owned at his new duty station. This Board has recognized that a transferred employee who moves into a home that was purchased before reporting to a new duty station shows an intent to reside there permanently. *James H. Fish*, CBCA 891-RELO, 08-1 BCA ¶ 33,726, at 166,981 (2007). It is apparent from the record that Mr. Shaw always intended to reside permanently in his home. From the time he arrived at his new duty station, Mr. Shaw stayed in his home in order to make repairs, and he arranged for his HHG to be delivered there. He never sought any other temporary or permanent housing.

Additionally, Mr. Shaw contends that he requested TQSE because he believed his home could be deemed temporary quarters while he made repairs and waited for delivery of his HHG. The fact that his HHG had not yet arrived is “an insufficient basis to consider the quarters temporary.” *James H. Fish*, 08-1 BCA at 166,981. In spite of the fact that Mr. Shaw found his home to have been less than adequate when he first occupied it, his actions in fixing up his home were “indicative of an intent to enter into permanent occupancy, thus terminating eligibility for TQSE.” *Jeffrey Dewey*, GSBICA 16106-RELO, 04-1 BCA ¶ 32,445, at 160,518 (2003).

Finally, Mr. Shaw argues that he was advised before his transfer that he would be entitled to receive TQSE. As discussed above, the facts of this case do not allow Mr. Shaw to receive TQSE. Regardless of whether Mr. Shaw received accurate advice, this Board cannot allow the payment of TQSE when he is not entitled to receive it. *See Jeffrey Dewey*, 04-1 BCA at 160,518.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge