UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 1, 2013

CBCA 3319-RELO

In the Matter of MRS. JOHN CURTIS

Jean Curtis, San Antonio, TX, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

POLLACK, Board Judge.

Mrs. John Curtis filed a claim for reimbursement of temporary quarters subsistence expenses (TQSE) denied to her late husband, John Curtis. The claim was denied on the basis that Mr. Curtis, in returning to the United States from Germany, did not relocate within a reasonable proximity to his former permanent duty station (PDS).

Mr. Curtis, an engineer with the Army Corps of Engineers (Corps), became ill while deployed to Germany. He sought and was granted authority to return early to his PDS in Galveston, Texas. At the time, the full nature of his illness was not known; however, as part of his travel orders (issued on August 17, 2012), the Corps approved his first going to Phoenix for the purpose of securing medical diagnosis (limiting his flight costs to that to Galveston) and then continuing on to Galveston. As part of the order, the Government authorized TQSE, real estate expenses, miscellaneous expenses, and concurrent dependent travel. There is no dispute that had Mr. Curtis ultimately located in Galveston, or nearby, the Corps would have paid the disputed TQSE. Instead, because Mr. Curtis wound up residing in San Antonio, Texas, the Corps' finance officials overruled the recommendation of Mr. Curtis' command which had initially sought to make payment for the TQSE costs incurred at the San Antonio location.

Federal Travel Regulation (FTR) 302-6.9 states, "You and/or your immediate family may occupy temporary quarters at Government expense within reasonable proximity of your old and/or new official stations. Neither you nor your immediate family may be reimbursed

for occupying temporary quarters at any other location, unless justified by special circumstances that are reasonably related to your transfer." 41 CFR 302-6.9 (2012). The Defense Department's Joint Travel Regulations (JTR) state that "TQSE in locations not in reasonable proximity of the old and/or new PDS may be authorized *only* if the AO [authorizing official] is convinced that the circumstances:

a. Are unique to the individual employee and/or dependents,
b. Are reasonably related to the transfer,
c. Have been adequately reviewed, and
d. Justify TQSE payment (FTR § 302.6.9).

JTR C5356-B.1.

The record indicates that the Corps' command which employed Mr. Curtis and issued the travel orders concluded that he had met the above and as such recommended payment. The record contains statements from command officials, both before and after the denial, which support a finding of the circumstances being unique and being reasonably related to the transfer. Nevertheless, when the request was considered by the finance office, that office concluded that Mr. Curtis did not meet the criteria to qualify for TQSE under the exceptions set out in the regulation. As we set out below, we find that the finance office has misapplied the criteria and Mr. Curtis met the requirements set out in the regulations so as to allow reimbursement for TQSE in a location other than his initially intended PDS.

The surrounding facts are straightforward. On September 8, 2012, after receiving authority to travel, including entitlement to TQSE, Mr. Curtis and his wife departed Germany for the United States with their ultimate destination as Galveston. As part of his orders, Mr. Curtis was authorized to stop first in Phoenix, Arizona, where Mr. Curtis had an appointment at the Mayo Clinic. There, Mr. Curtis was diagnosed with amyotrophic lateral sclerosis (ALS, more commonly known as Lou Gehrig's Disease).

Mr. Curtis and his medical team then attempted to get him admitted to the Texas Neurology MDA/ALS Center in Houston, Texas (a location near Galveston and one that is indisputedly within proximity to his PDS). However, they were told the facility did not have any openings to deal sufficiently with his condition. There is no issue that had Mr. Curtis been able to secure medical treatment in Houston, he would have been paid for whatever reasonable allowable TQSE costs that he and his family incurred. Faced with no adequate choice in Houston, Mr. Curtis and his medical team sought an alternative. Mr. Curtis was then admitted to the University of Texas Health Science Center in San Antonio, Texas. While in San Antonio, Mr. Curtis was on authorized sick leave. From the outset, it was

unclear when he would return to his PDS; however, his condition worsened and he passed away in February 2013. Accordingly, he never arrived at his PDS.

In assessing whether Mr. Curtis qualified for TQSE, we first note that the Corps, in the orders returning Mr. Curtis to his PDS, in fact authorized Mr. Curtis to fly first to Phoenix (for purposes of medical consultation) and then on to Galveston. Mr. Curtis' intention and expectation was that he would return to Galveston, and that is where he expected and intended to utilize his TQSE benefits. However, while in transfer status, Mr. Curtis had to secure medical attention. The diagnosis he received and its ramifications resulted in him having to move to San Antonio, rather than relocate to Galveston. This was not a matter of choice. Had Mr. Curtis been able to find a treatment facility in Galveston or Houston, he would have proceeded in that manner. His inability to relocate to Galveston was both unexpected and beyond his control. His actions were not a matter of choice or convenience, as those terms are commonly applied.

In November 2012, while still in San Antonio, Mrs. Curtis submitted a travel voucher on behalf of her husband to the Corps. The command office sought approval of the payment. However, the command office was overruled by the finance office. That office ruled that voucher was not payable, first on the basis that Mr. Curtis did not incur his TQSE costs at the PDS but rather in San Antonio; and then on the basis that an exception was not warranted because the decision on location was made for his convenience, was due to a medical problem, and thus was not related to the transfer. Ultimately, Mrs. Curtis appealed the denial of TQSE to this Board.

Unlike the Corps' finance office, we conclude that Mr. Curtis' circumstances fall squarely within the criteria for exceptions. Not only are the facts compelling, but his command consistently supported the payment and specifically found that he met the criteria for exceptions as set out in the regulations. The command's knowledgeable exercise of its discretion cannot be overruled by the finance office.

The agency in supporting its denial cites to *Ronald C. Williamson*, CBCA 728-RELO, 07-2 BCA ¶ 33,664. In that case, we denied TQSE in a situation where the claimant, in a TQSE status, requested reimbursement for expenses incurred while visiting his son for Christmas, rather than remaining at his PDS. We denied the claim on the basis that the expenses incurred were personal and unrelated to the transfer. Unlike the situation in *Williamson,* Mr. Curtis' choice of location was dictated by the absence of a suitable location in Houston or Galveston for his medical treatment. Had it been practical for him to locate in Houston or Galveston, he would have. We find that this is indeed the type of unique situation intended to be covered by the exceptions.

Accordingly, the TQSE sought should be paid to the extent it is otherwise reasonable and allowable.

HOWARD A. POLLACK
Board Judge