



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 21, 2014

CBCA 3896-RELO, 3897-RELO

In the Matter of JAMES BRUNESKE

James Bruniske, Odenton, MD, Claimant.

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

GOODMAN, Board Judge.

Claimant, James Bruniske, is a civilian employee of the United States Army Corps of Engineers. He has asked this Board to review the agency's denial of two claims for temporary quarters subsistence expenses (TQSE) arising from a permanent change of station (PCS) move.

Factual Background

Both claims arise from the same circumstances. Claimant states that on July 12, 2013, he received an official transfer letter and verbal notification that he would be entitled to transfer benefits in connection with a PCS move from his old permanent duty station (PDS), Hagerstown, Maryland, to his new PDS, Fort Meade, Maryland. PCS orders were issued two weeks later, on August 8, 2013, with a report date at the new PDS of August 12, 2013, authorizing TQSE for sixty days.

Before receiving travel orders, knowing such orders were forthcoming, claimant received permission from his supervisor to report for duty at his new duty station on July 29, 2013, and executed, on July 30, 2013, a one-year lease for an apartment at his new duty station for the period August 1, 2013 to July 31, 2014. Claimant states the reason for the one-year lease: "Understanding that I was to receive PCS TQSE on July 12, 2013 verbally from [my supervisor], in anticipation of my start date of July 28, 2013 and the sale

closing date of my residence [at the old PDS] of 30 August 2013 As a best value to the government, the townhouse lease would serve as my temporary quarters from 1 August 2013 until 30 August 2013 and serve as permanent quarters thereafter until 31 July 2014.”

Claimant states that because the travel orders were not issued until August 8, there was insufficient time to hire a moving company during the busy summer moving season to move his household goods (HHG) from his residence at the old PDS to the newly-rented apartment before the closing date for the sale of the residence on August 30, 2013. He therefore had to enter into a post-settlement occupancy agreement with the buyers of his residence at the old PDS until his HHG could be moved on September 13, 2013.

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Claimant submitted a travel voucher seeking reimbursement of TQSE from August 8 to 30, 2013, while he was living in the rented townhouse and working at his new PDS. He explains that since the closing date for the sale of his residence at the old PDS was not until August 30, 2013, he believes that his permanent residence remained at the old PDS and his temporary residence was in Hagerstown. Thus, as stated above, claimant intended the townhouse at the new PDS to be temporary quarters through the end of the month until he sold the residence at the old PDS, and thereafter the townhouse would be his permanent quarters at the new PDS. The agency denied the claim.

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After claimant’s first claim was denied, he submitted a travel voucher seeking payment of TQSE at his old PDS from August 30 to September 13, 2013, for the period of the post-settlement occupancy agreement, until he moved his HHG from his old residence to his new PDS. He bases this claim on his belief that after the sale of his residence at the old PDS, he considered his permanent residence to be the townhouse at the new PDS, but he considered his residence at the old PDS—already sold—to be his temporary residence until he moved his HHG to the new PDS. The agency also denied this claim.

Discussion

The agency’s denials of reimbursement of claimant’s TQSE claims were correct. While claimant’s travel orders authorized TQSE, claimant is not entitled to TQSE under the circumstances of this case.

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) (2012). 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 (2013).

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 the duration of the lease, the 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 302-6.307. Such a determination should revolve around the employee’s intention at the time the employee occupies the quarters. *E.g., Brian R. Weeks*, CBCA 2320-RELO, 11-2 BCA ¶ 34,795; *Stephen A. Monks*, GSBCA 15029-RELO, 00-1 BCA ¶ 30,650 (1999).

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Claimant rented the townhouse at the new PDS as of August 1, 2013, and began living in the townhouse when he entered on duty at the new PDS on August 8, 2013. He states that when he rented the townhouse, “As a best value to the government, the townhouse lease would serve as my temporary quarters from 1 August 2013 until 30 August 2013 and serve as permanent quarters thereafter until 31 July 2014.” However, claimant fails to meet the following regulatory requirement:

The FTR at 41 CFR 302-6.14 states:

How is my TQSE allowance affected if my temporary quarters become my permanent residence quarters?

If your temporary residence quarters become your permanent residence quarters, you may receive your TQSE allowance only if you show in a manner satisfactory to your agency that you initially intended to occupy the quarters temporarily.

It is clear that claimant intended to continuously occupy the townhouse as his new PDS until the end of the lease term. Simply declaring the townhouse as temporary quarters for the first month, because he still owned a home at his old PDS, and then declaring the townhouse permanent quarters thereafter, does not make it so. When claimant occupied the

townhouse on August 8, 2013, with no further intent to seek other permanent quarters at the new PDS, the townhouse became his permanent quarters—it was never temporary quarters. While it is true that claimant’s PCS orders authorized reimbursement of TQSE, claimant was not entitled to TQSE, as entitlement to TQSE ends on the day preceding the day the employee and/or any immediate family member occupies permanent residence quarters. 41 CFR 302-6.18. The fact that claimant did not have his HHG in the townhouse until later did not convert the quarters into temporary quarters. *James H. Fish*, CBCA 891-RELO, 08-1 BCA ¶ 33,726 (2007).

When claimant submitted his voucher for reimbursement for the period August 8-30, 2013, the agency properly denied reimbursement of the amount claimed for TQSE on the basis that claimant was living in permanent quarters at the new permanent duty station.

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Claimant’s second claim for TQSE is for the period August 30 to September 13, 2013. He bases this claim on the circumstances that required him to delay moving his HHG from his prior residence at the old PDS. Since he entered into a post-settlement occupancy agreement with the buyers of his old residence until he removed his HHG, he believes he is entitled to TQSE, as his prior residence at his old PDS was a “temporary residence” until September 13, when his HHG were removed.

Again, the agency properly denied reimbursement of TQSE under these circumstances. Claimant was already in permanent quarters at the new PDS during this period. Once relocated and living in permanent quarters at a new PDS, a prior residence at the old PDS is not deemed temporary quarters for purposes of TQSE reimbursement, even if expenses are being incurred there. It is not uncommon for relocated employees to secure permanent housing at a new PDS and continue to incur expenses at the old PDS until the prior residence is sold and/or vacated.¹

¹ Claimant confuses temporary duty (TDY) with relocation, as he states that he attempted to reconfigure this claim as a “TDY claim.” In so doing, he maintains that since his residence at his new PDS was now permanent, the residence at the old PDS was his temporary residence since he had arranged to keep his furniture there. Claimant was not on TDY orders at his old PDS—he was simply incurring expenses there until his HHG could be moved.

Decision

The claims are denied.

ALLAN H. GOODMAN
Board Judge