



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 18, 2016

CBCA 5066-RELO

In the Matter of CHARLES J. SHEDRICK

Charles J. Shedrick, Lackland, TX, Claimant.

Helen M. King, Budget Analyst, Air Force Personnel Center, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

BEARDSLEY, Board Judge.

Claimant, Charles J. Shedrick, a civilian employee of the Department of the Air Force (Air Force), seeks the Board's review of the Air Force's denial of his request for an extension of twenty days for temporary quarters subsistence expenses (TQSE) under the actual expense method in conjunction with his permanent change of station (PCS) move from the Pentagon in Arlington, Virginia, to Joint Base San Antonio in Lackland, Texas. For the reasons explained below, we affirm the Air Force's determination and deny the claim.

Factual Background

In August 2015, claimant was authorized twenty-one days of TQSE as part of his PCS move. Claimant arrived at his new duty location in Texas on September 2, 2015. Claimant's TQSE entitlement consequently expired on September 22, 2015. On September 3, 2015, claimant entered into a contract for a new house in Texas with an estimated closing date of September 30, 2015. Claimant knew that the estimated closing date was after the TQSE period expired and that the closing process could take thirty to forty-five days. Claimant also knew that the closing date was subject to change, and on September 26, 2015, the closing date was changed to October 9, 2015.

Claimant made a request for a twenty-day extension of TQSE beyond the initial twenty-one days authorized.¹ Claimant requested an extension because he had a closing date on his newly constructed house after the initial TQSE period expired. Claimant further asserted that the TQSE period should be extended on the grounds that (1) he did not take a house hunting trip but would have taken such a trip if he had had advance knowledge of the thirty- to forty-five-day mortgage closing time; (2) he was initially allowed twenty-one days instead of sixty days of TQSE; (3) twenty-one days is not a reasonable amount of time to purchase a new house; (4) the Air Force Personnel Center did not clearly communicate to him the requirements for extending TQSE recovery beyond twenty-one days; and (5) he owns a Rottweiler dog that prevents him from living in most rental properties or government housing. The Air Force evaluated claimant's request on two occasions, and both times determined that claimant did not present a sufficiently compelling justification for the requested extension. Specifically, the Air Force denied claimant's request for additional TQSE after consideration of each reason presented by claimant and determined that "TQSE cannot be extended when the employee elects and accepts an original date of closing outside the employee's initial TQSE period."

Discussion

The Federal Travel Regulation (FTR) implements the statute providing for TQSE. The Joint Travel Regulations (JTR) are the Department of Defense's rules implementing the FTR and must be construed consistently with the FTR. Claimant's claim is governed by both the FTR and the JTR. *Michael R. Lujan*, CBCA 4613-RELO, 15-1 BCA ¶ 36,096. As described by the JTR, TQSE is "a **discretionary, not mandatory**, allowance intended to partially reimburse an employee for reasonable subsistence expenses incurred when it is necessary for the employee to occupy **temporary lodging incident to a PCS move**." JTR 5772. The FTR and the JTR both permit the agency to extend the period of eligibility for reimbursement of TQSE beyond the initial TQSE period if the agency determines that there was a compelling reason for the employee to continue occupying temporary quarters. The compelling reason for the temporary lodging occupancy, however, must be "due to circumstances beyond the employee's control." 41 CFR 302-6.105 (2015) (FTR 302-6.105); JTR 5802-B.2.a. The FTR defines a compelling reason as "an event that is beyond your control and is acceptable to your agency." FTR 302-6.105. Both regulations provide similar examples of compelling reasons beyond an employee's control that may support an extension

¹ The number of days of additional TQSE requested by claimant has varied throughout his filings. Claimant requested twenty-five days initially and later requested twenty-one days. On another occasion, he requested fourteen days. In his filing with the Board, claimant requested twenty days.

of the TQSE. The JTR references “[d]elayed occupancy of new permanent private sector housing because of unanticipated problems (e.g., unforeseen delays in permanent private sector housing settlement/closing, or unforeseen short-term delay in new dwelling construction).” JTR 5802-B.2.a(2). Examples provided in the FTR include, “You cannot occupy your new permanent residence because of unanticipated problems (e.g., delay in settlement on the new residence, or short-term delay in construction of the residence.)” FTR 302-6.105.

The authorizing official has considerable discretion to determine what constitutes a compelling reason to support an extension. The Board will not overturn the agency’s decision regarding an extension of the TQSE unless it is arbitrary, capricious, or contrary to law. *Lujan*; *Melinda Salmon*, GSBCA 15832-RELO, 02-2 BCA ¶ 31,965; *John E. Joneikis*, GSBCA 15455-RELO, 01-2 BCA ¶ 31,514.

The Air Force’s decision to deny the extension request on the basis that the closing date after the TQSE period expired was not an unanticipated problem or unforeseen delay in closing on the new residence was not arbitrary, capricious, or contrary to law. Claimant identified the closing process as the primary justification for his request for an extension of TQSE. Claimant knew that the scheduled closing date was after the TQSE period expired, that the closing date was estimated, that the closing date was subject to change, and that the closing process could take at least thirty to forty-five days. Similarly, in *Salmon*, the claimant entered into a contract knowing that the closing date for her new residence was after expiration of the initial TQSE period. The General Services Board of Contract Appeals (GSBCA) found that the agency’s decision to deny claimant’s request for an extension due to a closing date after the expiration of the initial TQSE was reasonable and not an abuse of discretion. *Salmon*, 02-2 BCA at 31,965; *see also Melinda Slaughter*, CBCA 754-RELO, 07-2 BCA ¶ 33,633. The fact that the closing date was extended from the estimated date of September 30, 2015, to October 9, 2015, was also not an unforeseen delay or compelling, unanticipated problem beyond claimant’s control that warranted an extension of the TQSE. *See Slaughter* (denying TQSE extension request because claimant signed a contract for a new house with an anticipated completion date beyond the initial TQSE period, even though the anticipated completion date was extended); *Michael D. Haragan*, GSBCA 14663-RELO, 98-2 BCA ¶ 30,102; *Bruce Park*, GSBCA 14529-RELO, 98-2 BCA ¶ 29,932.

As reasonably determined by the Air Force, claimant’s reasons for signing a contract that closed after the TQSE period expired were not compelling reasons beyond his control that warranted an extension of his TQSE. The fact that claimant owned a dog, that he decided not to take a house hunting trip, that he claimed that there was a lack of communication about the requirements for a TQSE extension, or that the initial TQSE period was twenty-one days instead of sixty days were not compelling, unanticipated problems that

delayed occupancy of the house. The Air Force, therefore, properly utilized its discretion and made a determination to deny an extension of the TQSE period that was not arbitrary, capricious, or contrary to law.

Decision

For the foregoing reasons, the Board affirms the Air Force's determination and denies the claim for an additional twenty-days of TQSE.

ERICA S. BEARDSLEY
Board Judge