



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 15, 2016

CBCA 4953-RELO

In the Matter of JEROME G. NELSON

Jerome G. Nelson, Rapid City, SD, Claimant.

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

VERGILIO, Board Judge.

Claimant's rental of a room, with use of bathroom, in the empty level of a house that would become claimant's permanent residence, constituted temporary quarters given that the owner occupied the remainder of the house, claimant had access to a very limited portion of the house, claimant lacked household goods, and the price was in keeping with limited occupancy akin to cabin rental when that rental was no longer available to claimant.

The claimant, Jerome G. Nelson, a civilian employee of the United States Army Corps of Engineers, seeks review of a determination denying reimbursement for nine days of temporary quarters subsistence expenses (TQSE) for July 29 through August 3, 2015. The claimant's start date at the new location was May 21, 2015. During the end of the claimed TQSE period, the claimant continued his stay at a cabin (July 26-28) at \$30 per day, and then rented a room and bathroom for July 29-31, and August 1-3, at \$30 per day from the owner at the house he would be purchasing with a closing on August 5. No rent was charged for August 4. The owner of the house continued to occupy the upper level, departing on August 5. In this empty lower level of the house, the claimant had access only to a bedroom and bathroom; the claimant did not have use of the kitchen or upper level of the house. There is no suggestion that the claimant had his household goods (HHG) or that they would have fit into the space rented. The record provides no basis to dispute the claimant's assertions that other quarters were not available (except at far more expensive rates) at or around the

location during an annual motorcycle rally. The claimant opted for the arrangement to avoid having to take annual leave and find accommodations in a distant location.

In denying TQSE for this period and concluding that the quarters were not temporary because they became permanent quarters, the agency relies upon applicable provisions of the Federal Travel Regulation (FTR), 41 CFR 302-6 (2015) (FTR 302-6) and opinions, including *Shane C. Jones*, GSBICA 15462-RELO, 01-1 BCA ¶ 31,405, and cases cited therein. “Temporary quarters” refer to “lodging obtained for the purpose of temporary occupancy from a private or commercial source.” FTR 302-6.1. The regulation also addresses what happens if temporary quarters become one’s permanent residence: “If your temporary quarters become your permanent residence quarters, you may receive a TQSE allowance only if you show in a manner satisfactory to your agency that you initially intended to occupy the quarters temporarily.” FTR 302-6.14. Regarding an agency’s responsibilities, regulation specifies that when determining whether quarters are temporary an agency should consider factors “such as the duration of the lease, movement of household effects into the quarters, the type of quarters, the employee’s expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters.” FTR 302-6.307.

The agency concluded that when the claimant entered into the arrangement to rent the space in what was known would become the permanent residence the temporary nature of the lodging ceased. The agency applies the regulations to this situation in an overly restrictive manner. Regarding the first few days at issue, the stay at the cabin represents a stay at temporary quarters. The claimant is entitled to TQSE benefits for July 26-28.

After departing the cabin, the claimant moved into a portion of what would become a permanent residence, with access to a room and bathroom. The main portion of the house continued to be occupied by the owner and contained the owner’s HHG. The claimant did not intend to occupy the rented space (room with bathroom) permanently; the rented space was but a subset of the permanent residence. The claimant lacked a kitchen, other amenities, and HHG. The agency does not suggest that the HHG could have fit into the rented space. The charge for rental (\$30 per day) further indicates that the claimant was occupying much less than the actual residence. The rental space did not become the permanent residence. The claimant occupied temporary quarters at what would become a permanent residence.

Because the claimant occupied temporary quarters on July 26 through August 3, the claimant is entitled to recover TQSE for the nine days at issue. The agency is to make the necessary calculations and payment.

JOSEPH A. VERGILIO
Board Judge