



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 6, 2017

CBCA 5426-RELO

In the Matter of DEAN W. YODER

Dean W. Yoder, Robins Air Force Base, GA, Claimant.

Paulina E. Camacho, Financial Management Specialist, Department of the Air Force, Joint Base San Antonio-Randolph, TX, appearing for Department of the Air Force.

BEARDSLEY, Board Judge.

Claimant, Dean W. Yoder, 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 thirty days for temporary quarters subsistence expenses (TQSE) under the actual expense method in conjunction with his permanent change of station (PCS) move from Osan Air Base, Korea, to Robins Air Force Base, Georgia. For the reasons explained below, we affirm the Air Force's determination and deny the claim.

Factual Background

On March 31, 2016, claimant was authorized sixty days of TQSE as part of his PCS move. Claimant arrived at his new duty location in Georgia on April 17, 2016. Claimant's TQSE entitlement consequently expired on June 15, 2016. On June 11, 2016, claimant entered into a sales agreement for a new house in Georgia with a closing date of July 15, 2016. Claimant tried to move into this new house before his TQSE expired, but he could not until after the closing date. Due to problems with this house that became evident in the inspection process, claimant was released from his first house contract, found another house, and moved into the second house on July 21, 2016.

Claimant had delayed buying a house until his family could relocate to Georgia from Korea because it was a "huge family decision (financially and emotionally)." In addition, claimant was "under the impression" that he could extend his TQSE up to ninety days.

Claimant complains that he was not provided timely the rules for obtaining a TQSE extension despite efforts to obtain guidance as to how to request a TQSE extension beginning April 21, 2016. Claimant submits that he was not aware of the regulations governing a TQSE extension request until he received the TQSE extension request form on June 10, 2016. Notably, however, in an email message dated April 21, 2016, the Air Force human resource specialist seemed to provide claimant with a link to Air Force information explaining the requirements for obtaining an extension to TQSE. Claimant's orders also specifically referred him to "JTR [Joint Travel Regulations], CH 5, Part B" on the subject of TQSE. Moreover, although claimant did attempt without success on two occasions to call another contact person in human resources to whom he had been referred, claimant did not attempt to contact this person by email until May 23, 2016. Nonetheless, claimant asserts that once he became aware of the regulations governing TQSE extensions, he immediately began to look for a house, but the date set for closing on the house was determined by the lenders and beyond his control.

Discussion

This claim is governed by the Federal Travel Regulation (FTR), and since it is an Air Force claimant, the JTR also applies to the extent it is consistent with the FTR. *Michael R. Lujan*, CBCA 4613-RELO, 15-1 BCA ¶ 36,096, at 176,235.

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 and/or the employee's dependent(s) to occupy **temporary lodging incident to a PCS move.**" JTR 5772. The Air Force can 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 (2016) (FTR 302-6.105); JTR 5802-B.2.a.

The FTR's and JTR's examples of circumstances beyond an employee's control include (1) delayed household goods transportation or delivery due to strikes, hazardous weather, fires, or flood; (2) delayed occupancy of housing due to unanticipated problems such as unforeseen delays in closing or new dwelling construction; (3) inability to find permanent housing due to housing conditions; (4) sudden illness, injury, or death of an immediate family member; or (4) similar reasons. FTR 302-6.105; JTR 5802-B.2.a.

The Air Force denied claimant's claim for a thirty-day extension of TQSE because it did not find either the delayed arrival of claimant's family or the closing date set by the

lenders outside the initial TQSE period as a compelling reason beyond claimant's control. Instead, the Air Force determined that claimant's decision was based on a personal preference.

It is "well established that TQSE reimbursement is an allowance provided to government employees as a matter solely within the discretion of their agencies and not as a benefit to which they are automatically entitled." 5 U.S.C. § 5724a(c) (2016); *Christopher W. Harding*, CBCA 4542-RELO, 15-1 BCA ¶ 35,990, at 175,828; *Thomas G. Tucker, Jr.*, GSBCA 16682-RELO, 06-1 BCA ¶ 33,168, at 164,356-57 (2005); FTR 302-6.6. The Air Force, therefore, has 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. *Lawrence K. Hoskin*, CBCA 5521-RELO, 16-1 BCA ¶ 36,548, at 178,028 (citing *Rajiv R. Singh*, GSBCA 16892-RELO, 06-2 BCA ¶ 33,418); *Melinda Salmon*, GSBCA 15832-RELO, 02-2 BCA ¶ 31,965, at 157,905 (quoting *Michael D. Haragan*, GSBCA 14663-RELO, 98-2 BCA ¶ 30,102)

The Air Force's decision to deny claimant's extension request was not arbitrary, capricious, or contrary to law. *Hoskin*, 16-1 BCA at 178,028-29 (holding that the agency did not act arbitrarily or capriciously in finding no compelling reason for extending TQSE because the mortgage company set the closing date on claimant's house for after the expiration of the initial TQSE period); *see also Melinda Slaughter*, CBCA 754-RELO, 07-2 BCA ¶ 33,633, at 166,579; *Salmon*, 02-2 BCA, at 157,905. Closing on his house after the TQSE period expired was not due to an unanticipated problem, unforeseen delay, or similar reason. Due to personal circumstances, claimant did not even enter into a contract for a house until days before his TQSE expired. His choice to wait for his family before purchasing a house caused the closing date to be set by the lender after his TQSE expired and was not beyond claimant's control.

Claimant alleges that he did not receive accurate or timely guidance regarding the requirements for extending his TQSE. Although it seems that claimant may have overlooked guidance received in April 2016 and that claimant could have been more diligent in his efforts to contact individuals who could give him the necessary guidance, it is unfortunate that claimant was inadequately or inaccurately informed. Nonetheless, even if claimant did not timely receive the guidance he needed, it is well established that receipt of inadequate or erroneous information is not a basis for granting a claim. *Gene Kourtei*, CBCA 793-RELO, 08-1 BCA ¶ 33,724, at 166,977 (2007) (citing *Joseph E. Copple*, GSBCA 16849-RELO, 06-2 BCA ¶ 33,332).

The Air Force found that there were no unforeseen circumstances beyond claimant's control that justified an extension of TQSE. Utilizing its discretion, the Air Force denied claimant's TQSE extension request and this denial was not arbitrary, capricious, or contrary to law.

Decision

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

ERICA S. BEARDSLEY
Board Judge