UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 23, 2017

CBCA 5374-RELO

In the Matter of DANIEL E. MORITZ

Jeffrey H. Jacobson of Jacobson Law Firm, Tucson, AZ, appearing for Claimant.

William G. Hughes, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

CHADWICK, Board Judge.

Daniel E. Moritz timely sought review after his agency denied reimbursement of temporary quarters subsistence expenses (TQSE) on the grounds that his occupancy of a rented house was not temporary. We view this as a close question but grant the claim based on the balance of the evidence before us.

Background

In early 2015, when Mr. Moritz was stationed overseas, the agency evacuated his wife to the United States for medical reasons. It was later determined that she needed to stay in this country, so, in June 2015, she and Mr. Moritz signed a lease for a house in Northern Virginia, naming the two of them as the singular "tenant." Mrs. Moritz and their minor child occupied the house around August 1, 2015, when the lease took effect. The family moved to the house some household goods that they had stored in the United States while they lived overseas. Although a "tenant" under the lease, Mr. Moritz remained at his foreign post for the time being with the family's other household goods.

The lease term was two years, through July 2017, subject to termination under limited circumstances. As written, the lease allowed termination on one month's notice if the landlord, who was stationed outside the Washington, D.C., region, was "transferred back"

to the area by his employer, or if the tenant was "transferred" fifty miles or more from the house. Mr. Moritz submitted evidence that, despite the text of the lease, he and the landlord agreed at some point that the Moritzes could "depart from the lease at any time," subject to a penalty in the first year. Mr. Moritz also filed a declaration from the landlord stating that the lease protected "both parties in the event the lease had to be broken before the end of the first year." In an exchange of email messages in April 2016, the landlord confirmed Mr. Moritz's statement that, "as soon as [Mr. Moritz] found out that [he] would be departing . . . for . . . the DC area, [he] informed [the landlord] that [he] would be seeking to purchase a residence and recommended that [the landlord] . . . prepare to find a replacement renter."

After his family members moved into the Virginia house, Mr. Moritz requested and received a transfer to the Washington, D.C., area (less than fifty miles from the rental house). Mr. Moritz's relocation orders, as later amended, authorized reimbursement of up to ninety days of actual TQSE. He moved into the Virginia house on November 14, 2015, and reported to his new duty station the next day.

On January 5, 2016, Mr. Moritz wrote to an agency relocation representative that his family was "renting a TQ until I can find a perm res [sic]," and that he needed their household goods from the foreign post to remain in storage "until such time that we can locate something. Please provide me some direction on the home relocation program."

In February 2016, Mr. Moritz submitted three vouchers seeking $25,906.69 in TQSE from November 15, 2015, through February 12, 2016. The agency returned the vouchers unprocessed, advising him that it did not consider the Virginia house temporary quarters based on the duration of the lease and the fact that Mr. Moritz signed it five months before he changed duty stations.

On April 4, 2016, Mr. Moritz told the agency that he expected to close on the purchase of a permanent residence on April 15. Mr. Moritz tells us, and the agency does not deny, that the Moritz family moved into that home in June 2016 and had their household goods from the overseas post delivered there. Mr. Moritz says he paid no "penalty" to the Virginia landlord for ending the lease before the two-year term ended. He asked the Board in June 2016 to review the agency's denial of his TQSE claim.

Discussion

Reimbursement of transferred employees' TQSE is authorized under these circumstances by statute and regulation. 5 U.S.C. § 5724a(c) (2012); 41 CFR 302-6.4 (2015). Reimbursement is not guaranteed simply because the agency authorizes TQSE in relocation orders. The employee still must show that he occupied temporary rather than

permanent quarters at the new duty location. *E.g.*, *Keith E. Kuyper*, GSBCA 15839-RELO, 02-2 BCA ¶ 31,983. The Federal Travel Regulation (FTR) in effect when Mr. Moritz relocated states that, in deciding whether quarters were temporary, we 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." 41 CFR 302-6.307.

Our analysis centers on Mr. Moritz's intent when he moved to Virginia in November 2015. *See James Bruneske*, CBCA 3896-RELO, et al., 14-1 BCA 35,774, at 175,007 ("[The] determination should revolve around the employee's intention at the time the employee occupies the quarters." (citing *Brian R. Weeks*, CBCA 2320-RELO, 11-2 BCA ¶ 34,795; *Stephen A. Monks*, GSBCA 15029-RELO, 00-1 BCA ¶ 30,650 (1999))). We and our predecessor board have in some such decisions focused on the employee's intent "when he leased the quarters," *Juan G. Bernal*, CBCA 1648-RELO, 10-1 BCA ¶ 34,331, at 169,572 (2009) (citing *Monks*); *see also Brenda Byles*, GSBCA 14592-RELO, 99-1 BCA ¶ 30,156, at 149,267 (1998) ("at the time the living arrangement was entered into"); *Kim R. Klotz*, GSBCA 13648-RELO, 97-1 BCA ¶ 28,789, at 143,633 (same), which in this case would be June 2015. The Comptroller General, in earlier decisions applying the same standard, focused on the time when the employee "move[d] into the dwelling." *Carl A. Zulick*, 67 Comp. Gen. 585, 587 (1988). Because people typically lease residences intending to occupy them soon afterward, this distinction rarely makes a difference. Here, where the claimant leased the house for his family members significantly before learning that he would relocate, we apply our precedent directing our attention toward the date he moved into the home.

The evidence is mixed but on balance suggests that Mr. Moritz intended in mid-November 2015 to occupy the Virginia house temporarily. Weighing in favor of the claim are the facts that the Moritzes did not move their household goods from the foreign post into the rental house, and that they moved to a new home less than eight months after Mr. Moritz arrived in Virginia. Ordinarily, a lease for longer than a year—the factor on which the agency focuses—suggests permanent residence, but we place less weight on that factor under the highly unusual circumstances presented here, where the employee arrived at the new duty station to an existing lease that he signed prior to his transfer. The other evidence is either inconclusive or weakly supports the claim.

Decision

The claim is granted as to entitlement. The agency should process the vouchers and reimburse Mr. Moritz in accordance with regulation and his relocation orders for his documented actual TQSE.

KYLE CHADWICK
Board Judge