



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 13, 2017

CBCA 5822-RELO

In the Matter of KAREN M. STANLEY-WOLFE

Karen M. Stanley-Wolfe, Moreno Valley, CA, Claimant.

Chris Barned, Relocation Specialist/Certifying Officer, National Operations Center, Bureau of Land Management, Department of the Interior, Denver, CO, appearing for Department of the Interior.

LESTER, Board Judge.

Claimant, Karen M. Stanley-Wolfe, asks us to review a decision by the Department of the Interior's Bureau of Land Management (BLM) denying reimbursement for expenses that she had to pay to conclude her apartment lease at her original duty station after the BLM relocated her to a new duty station. We grant Ms. Stanley-Wolfe's claim in part.

Background

On May 6, 2016, while assigned by BLM to a permanent duty station in Boulder City, Nevada, Ms. Stanley-Wolfe executed a residential lease agreement for an apartment in Boulder City with a term ending on April 30, 2017. Under the terms of the lease agreement, Ms. Stanley-Wolfe, after making a pro-rated rental payment for the month of May 2016, was obligated to pay \$750 in rent on the first day of every month until the expiration of the lease term and then, unless she had previously provided a timely notice of intent to vacate at the expiration of the agreement, to continue making \$750 payments on a month-to-month basis until either party terminated the lease by giving the other party thirty days' written notice.

The agreement did not provide the tenant with an express affirmative right to terminate the lease prior to the end of its April 30, 2017, term, with an exception not applicable here for members of the United States Armed Forces on extended active duty. The agreement further provided that Ms. Stanley-Wolfe could not assign, sublet, or transfer her interest in the lease without the landlord's prior written consent. It also provided that, upon lease termination, Ms. Stanley-Wolfe would vacate the apartment, remove all of her property, and "return keys, personal property and Premises to the landlord in good, clean and sanitary condition, normal wear excepted." Lease Agreement ¶ 24.

On or about December 19, 2016, seven months into the one-year lease term, BLM notified Ms. Stanley-Wolfe that it would be transferring her to a new duty station in Moreno Valley, California, effective January 8, 2017. On December 20, 2016, a BLM relocation specialist introduced herself to Ms. Stanley-Wolfe by email message and provided several forms (including a transferee employee data sheet and a service agreement) for Ms. Stanley-Wolfe to complete. Ms. Stanley-Wolfe returned the completed forms as attachments to a December 22, 2016, email message, but asked about the time frames for completion of her move and whether she should continue making monthly rental payments for her Boulder City apartment. She did not receive a specific response to that question.

Because BLM needed to fill several positions in Moreno Valley expeditiously, Ms. Stanley-Wolfe's transfer was, as the agency indicates, "somewhat haphazard." Agency Response at 2. Typically, BLM "requires at least six weeks . . . to coordinate a move," which provides time to "prepare paperwork, obtain funding, issue a relocation travel authorization, and arrange for shipment of the [employee's] household goods" (HHG). *Id.* BLM acknowledges that, in Ms. Stanley-Wolfe's case, "there was not enough time between notification [to Ms. Stanley-Wolfe of the transfer] and the [entry on duty date of January 8] to properly coordinate the relocation." *Id.* As a result, when Ms. Stanley-Wolfe left her Boulder City apartment on January 8, 2017, and traveled to her new duty station, the agency had not yet prepared a relocation travel authorization, and it had made no arrangements for transporting her HHG (which, for reasons that we discuss below, the agency was obligated to do in this case). Accordingly, prior to her departure for Moreno Valley on January 8, no arrangements were made with a commercial van line to transport Ms. Stanley-Wolfe's HHG to the new duty station. Nevertheless, Ms. Stanley-Wolfe notified her landlord of her impending move and, prior to her departure, told the landlord that, as soon as she had a date for the removal and transport of her HHG, she would provide notification of the date by which she would fully vacate the apartment.

By email message dated January 25, 2017, the BLM relocation specialist asked Ms. Stanley-Wolfe to identify the address in Boulder City from which the HHG would need to be moved. In a responsive email message on January 30, 2017, Ms. Stanley-Wolfe, in

addition to providing that address and (at the relocation specialist's request) another completed transferee employee data sheet, asked the relocation specialist to identify "a window of availability" for the HHG transport so that she could request time off from her new job to return to Boulder City to meet the movers. After receiving no response, Ms. Stanley-Wolfe sent another email message to the BLM relocation specialist on February 9, 2017, representing that her Boulder City landlord had called to ask when she would be vacating her apartment so that it could be advertised and indicating that, if she could arrange to have her HHG moved no later than April 1, she could arrange for time off from her job to meet the movers. After receiving no response, she left a voicemail message for the relocation specialist on February 13, 2017. She then sent an email message to a BLM human resources specialist, asking if there was someone other than the relocation specialist who might be able to help her get her HHG out of Nevada, as she very much wanted to know "when I can vacate the apartment (when will the movers arrive)." The human resources specialist responded that the BLM relocation specialist had been "completely swamped" by the "rush of hires" and then left a voicemail message for the relocation specialist to try to assist in expediting the process.

It was not until February 17, 2017, that the BLM relocation specialist sent an order to Berger Management Solutions, BLM's HHG move manager, requesting transport of Ms. Stanley-Wolfe's HHG from Boulder City to Moreno Valley. That same day, a BLM HHG shipment coordinator spoke with Ms. Stanley-Wolfe to schedule a date for the HHG transport and provided Ms. Stanley-Wolfe with a list of what BLM viewed as acceptable transport dates. Because she had already been scheduled by her supervisors at her new duty station for various necessary travel activities and had a jury duty obligation, Ms. Stanley-Wolfe was unable immediately to travel to Boulder City to coordinate the HHG shipment from her old apartment. She selected a relocation date of March 27 and 28, 2017, from the list of acceptable dates provided.

On March 7, 2017, Ms. Stanley-Wolfe notified her Boulder City landlord of her intent to vacate her apartment on March 28, 2017. By letter dated March 8, 2017, the landlord notified Ms. Stanley-Wolfe that, although it had begun advertising the apartment for rent in response to her March 7 notice, she would remain responsible for rent and utilities through the end of her lease term (April 30) unless the landlord was able to rent the apartment to someone else prior to that date. The landlord further indicated that "[w]e will do a walkthrough of the property after [it] has been vacated on March 28, 2017, . . . will put a lockbox on the property for future showings after you have vacated as of 03/28/17," and "will give you a 24 hour notice in the meantime for showings until the property is vacated."

The movers packed Ms. Stanley-Wolfe's HHG on March 27, 2017, and removed the HHG the next day. Yet, Ms. Stanley-Wolfe did not return her keys for the apartment to the

landlord at that time. Instead, by letter dated March 28, 2017, she provided the landlord with “an alternate and more reliable contact number for providing 24-hour notice to show the apartment” (even though the landlord had previously indicated that notice would be necessary only “until the property is vacated”), and she paid her April rent. Ms. Stanley-Wolfe asserts that she provided this information and retained her keys because, under the terms of her lease, she was responsible for any damage to the apartment until the end of the lease term unless it was leased to someone else prior to that date.

Subsequently, from April 19 to 21, 2017, while on temporary duty (TDY) travel for annual training with the United States Air Force (Air Force) at Nellis Air Force Base in Nevada (approximately thirty-five miles from Boulder City), Ms. Stanley-Wolfe stayed at her Boulder City apartment.¹ She indicates that she intended to clean the apartment during that stay, but that she discovered upon her arrival that the landlord had already cleaned it and disposed of the cleaning supplies she had left behind. Ms. Stanley-Wolfe returned the apartment keys to the landlord by certified mail on April 27, 2017, and her lease expired on April 30, 2017.

On May 1, 2017, BLM for the first time provided Ms. Stanley-Wolfe with a travel authorization for her relocation, back-dated to December 21, 2016. The travel authorization provided that Ms. Stanley-Wolfe was entitled to HHG shipment “at Government expense” on a government bill of lading (GBL), and it provided entitlement to reimbursement for lease settlement fees incurred at the old duty station. BLM has indicated that the relocation specialist prepared and signed the travel authorization at some unknown point after Ms. Stanley-Wolfe’s relocation was effected on January 8, 2017, and that the authorization was “improperly backdated.” Agency Response at 2.

On or about May 5, 2017, Ms. Stanley-Wolfe submitted a travel voucher seeking reimbursement of various costs associated with her relocation, including \$3000 representing the rent on her Boulder City apartment from January through April 2017 and \$643.74 for utilities that she was required to pay during that period for the apartment. BLM initially denied that \$3643.74 reimbursement request, indicating that the amount could be reclaimed with receipts for the lease payments and invoices for the utilities, along with a statement from the landlord stating that the apartment was not re-rented after she had vacated it. On or about June 12, 2017, Ms. Stanley-Wolfe resubmitted her payment request (revising her utility reimbursement request down to \$338.91) along with receipts for the rental and utility payments.

¹ Given that BLM had moved her HHG, it is unclear from the record how Ms. Stanley-Wolfe was able to stay in the apartment for two nights in April 2017.

On July 6, 2017, a different BLM relocation specialist than the one previously involved notified Ms. Stanley-Wolfe that she was evaluating Ms. Stanley-Wolfe's request for recovery of what she considered to be "lease break" expenses, but indicated that she was "completely confused" by it and, in particular, about the sequence of events leading to the late March 2017 removal of the HHG and Ms. Stanley-Wolfe's mid-April 2017 stay in the Boulder City apartment, both of which occurred more than two months after Ms. Stanley-Wolfe's relocation to Moreno Valley. After soliciting additional information from Ms. Stanley-Wolfe, the specialist indicated that she could not "reimburse you lease breaking expenses for an apartment that your furniture was still in" because such expenses are allowable only for an apartment that has been vacated. On August 17, 2017, the BLM relocation specialist denied Ms. Stanley-Wolfe's claim for lease and utility costs in its entirety. Ms. Stanley-Wolfe then submitted her claim to the Board.

Discussion

I. Unexpired Lease Expense Reimbursements

By statute, an employee who transfers in the interest of the Government from one official duty station in the United States to another domestic duty station is entitled to reimbursement for expenses incurred in "the settlement of [the employee's] unexpired lease . . . at the old official station . . . that are required to be paid by the employee." 5 U.S.C. § 5724a(d)(1) (2012). Section 302-11.7 of the Federal Travel Regulation (FTR) both implements that obligation and identifies the prerequisites for reimbursement of such lease expenses:

When [a transferred employee's] unexpired lease . . . is for residence quarters at [the employee's] old official station, [the employee] may be reimbursed for settlement expenses for an unexpired lease, including but not limited to broker's fees for obtaining a sublease or charges for advertising if:

- (a) Applicable laws or the terms of the lease provide for payment of settlement expenses; or
- (b) Such expenses cannot be avoided by sublease or other arrangement; or
- (c) [The employee] ha[s] not contributed to the expenses by failing to give appropriate lease termination notice promptly after [the employee has] definite knowledge of [the] transfer; or

- (d) The broker's fees or advertising charges are not in excess of those customarily charged for comparable services in that locality.

41 CFR 302-11.7 (2016); *see* Department of the Interior, Permanent Change of Station Policy (DOI PCS Policy) ¶ 9.5 (Oct. 2012) (identifying in the agency's supplement to the FTR the same requirements for unexpired lease cost reimbursement). Although "[t]he [FTR] provision states the conditions in the alternative ('or'), . . . the meaning is clearly that all [four] of them must be fulfilled." *Mark. J. Musaus*, CBCA 2184-RELO, 11-1 BCA ¶ 34,749, at 171,054 n.1. If the employee meets the four prerequisites, the agency must reimburse the unexpired lease expenses. 41 CFR 302-11.430.

Generally, then, if an employee is required to transfer to a new duty station – and, by necessity, to vacate his or her apartment at the old duty station – before the end of a pre-existing lease at the old duty station, the employee is entitled to recover the rental and associated costs incurred for the vacated apartment so long as the employee has taken reasonable steps to try to mitigate those costs. *See, e.g., James R. Dikeman*, CBCA 4238-RELO, 16-1 BCA ¶ 36,200, at 176,653 (2015).² In considering whether the steps that an individual took to mitigate his or her unexpired lease expenses were adequate, the Board must apply a "reasonable prudence" standard. *Alphonso S. Hamilton*, CBCA 5109-RELO, 16-1 BCA ¶ 36,441, at 177,607. That is, in dealing with unexpired leases, "federal employees are 'expected to exercise the same care as a prudent person relocating at personal expense.'" *Fernando Vazquez*, CBCA 5469-RELO, 16-1 BCA ¶ 36,567, at 178,101 (quoting *Alphonso S. Hamilton*, 16-1 BCA at 177,607).

² We recognize that an employee generally cannot be reimbursed for expenses incurred in advance of his or her receipt of formal notification of a pending transfer. *Byron L. Wells*, CBCA 1206-RELO, 08-2 BCA ¶ 33,979, at 168,064; 41 CFR 302-11.305. "The reason given for this rule is that, if the transfer does not materialize, either the employee or the Government may 'lose money for no purpose.'" *Byron L. Wells*, 08-2 BCA at 168,064 (quoting *Connie F. Green*, GSBCA 15301-RELO, 01-1 BCA ¶ 31,175, at 153,998 (2000)). Nevertheless, the employee can still be eligible for reimbursement if, prior to his or her receipt of official orders, "the agency had manifested a clear 'administrative intent' to transfer the employee." *Connie F. Green*, 01-1 BCA at 153,998 (quoting *Dennis A. Edwards*, GSBCA 14943-RELO, 00-1 BCA ¶ 30,741, at 151,873). Here, the agency actually transferred Ms. Stanley-Wolfe to Moreno Valley almost four months before she received her official orders on May 1, 2017. Given that the agency had already required Ms. Stanley-Wolfe to report to her new duty station before any of the lease costs at issue were incurred, there is no doubt of the agency's clear administrative intent.

II. HHG Transport Reimbursements

In addition to entitlements relating to unexpired lease expenses at the old duty station, an employee transferred between official stations within the United States is also eligible for the transportation and temporary storage of HHG. 41 CFR 302-7.1(a). There are two authorized methods of transporting and paying for HHG transport and temporary storage: (1) a commuted rate system, under which the employee assumes total responsibility for arranging and paying for HHG storage and transport (subject to reimbursement by the agency), and (2) the actual expense method, by which the agency assumes those responsibilities. *Id.* 302-7.14. It is the agency's obligation to determine which of the methods will be authorized. *Id.* The Department of the Interior has adopted a policy of shipping HHG by the actual expense method, DOI PCS Policy ¶ 6.1, and a BLM employee cannot use the commuted rate system to arrange for HHG transport himself or herself unless and until BLM determines that employee self-transport is the most cost-effective means of transport and unless and until that alternate method is stated on the employee's travel authorization. *Id.* ¶ 6.9.

Under the actual expense method, which BLM eventually identified on the travel authorization that it belatedly prepared for Ms. Stanley-Wolfe, "the Government assumes full responsibility for transporting the goods which are shipped under a GBL." *Jeffrey R. Herman*, GSBICA 13832-RELO, 97-1 BCA ¶ 28,704, at 143,320 (1996). The agency "is responsible for making all the necessary arrangements for transporting HHG . . . and temporary storage, including but not limited to packing/unpacking, crating/uncrating, pickup/delivery, weighing, line-haul, etc." 41 CFR 302-7.200; *see Marilyn Daterman*, GSBICA 13686-RELO, 97-1 BCA ¶ 28,880, at 144,021 (agency "is required to select the carrier [that will transport the HHG]; to arrange carrier services including crating and packing; to pay the carrier; and to process claims for loss and damage").

"Ordinarily, an agency is expected not only to issue travel orders to a transferring employee before he or she is expected to report to the new duty station, but also to inform the employee of his or her transfer in sufficient time to permit the employee to prepare for the move." *Marsha M. Webb (Dompree)*, GSBICA 16542-RELO, 05-2 BCA ¶ 33,006, at 163,589. Further, it is typically preferable, or at least customary, for the transferring employee to oversee the GBL movers who are packing and transporting the employee's HHG. *See, e.g., Marilyn Daterman*, 97-1 BCA at 144,021. Sometimes, though, for various reasons (including staffing exigencies), an agency may not be able to provide an employee the necessary planning time prior to a transfer. Our predecessor board for travel and relocation matters recognized that at least certain relocation cost increases necessitated as a result of the agency's need to expedite the transfer fall upon the agency. For example, an employee who returns "to his old duty station to supervise the shipment of his HHG under

a GBL because, due to circumstances beyond his control, he was unable to ship the HHG at the time of his transfer” may be authorized reimbursement of the return trip expenses as a proper TDY assignment, even though, in normal circumstances, the agency would expect the employee to oversee the HHG shipment prior to his or her departure for the new duty station. *Richard DeLappe*, GSBICA 15640-RELO, 02-2 BCA ¶ 31,956, at 157,887; *see Martha M. Webb (Dompneh)*, 05-2 BCA at 163,589-90; *Marilyn Daterman*, 97-1 BCA at 144,021.

III. Ms. Stanley-Wolfe’s Lease Expenses

A. Expenses Through the End of March 2017

When Ms. Stanley-Wolfe was notified that she would be transferred within a very short time frame, she took appropriate action to attempt to deal with the activities that would be necessary for a move. She asked the BLM relocation specialist about the transport of her HHG, for which BLM was assuming responsibility under the actual expense method of HHG transport. She notified her Boulder City landlord that she was relocating effective January 8, 2017, and that she would give him the specific date that she would be out of her apartment as soon as BLM scheduled her HHG transport. After she began work at her new duty station, she repeatedly asked the BLM relocation specialist for information about when her HHG would be scheduled for transport. When, on February 17, 2017, a BLM HHG shipment coordinator contacted Ms. Stanley-Wolfe and offered, among other dates, March 28, 2017, as an acceptable HHG shipment date, Ms. Stanley-Wolfe accepted it.

In the circumstances here, we can see no basis for the agency’s denial of lease expenses through the date that the BLM-authorized transport company finally came to take Ms. Stanley-Wolfe’s HHG out of her Boulder City apartment. We recognize that, normally, “an underlying premise upon which the lease termination expense benefit is grounded is that the leased premises were actually vacated and the employee no longer continued to receive a benefit from the terminated lease.” *Patsy S. Ricard*, 67 Comp. Gen. 285, 289 (1988). That premise must yield, though, when *the agency itself* is the primary cause of the transferring employee’s inability to vacate the leased premises at the old duty station.

In light of its written policy, BLM was obligated to take control of the scheduling and transport of Ms. Stanley-Wolfe’s HHG. Because it failed to do so in a timely manner, Ms. Stanley-Wolfe’s HHG remained in her Boulder City apartment, through no fault of her own, after she had to transfer to Moreno Valley. Until the agency removed the HHG, she could not vacate the apartment. “Compensation [for a lease prematurely ended because of a transfer] is barred only where the employee could have reasonably avoided the charges,” considering the facts known at the time rather than in hindsight. *Carl E. Landrum*, CBCA 2663-RELO, 12-1 BCA ¶ 35,010, at 172,045; *see Lorenzo Henderson*, CBCA 651-RELO,

07-1 BCA ¶ 33,539, at 166,144 (lease breaking expenses are “not reimbursable when forfeiture could have been avoided”). Given that BLM’s inaction essentially forced Ms. Stanley-Wolfe to continue to occupy the Boulder City apartment until March 28, 2017, BLM cannot impose the resulting lease costs on her.

The situation here is in some ways comparable to that in *Rosemary H. Sellers*, GSBICA 13654-RELO, 97-1 BCA ¶ 28,714 (1996). The board’s primary holding in that matter was that the employee’s delay in providing termination notice, which resulted in the lease extending through mid-April when earlier notice would have allowed a lease end date of mid-March, was reasonable in the circumstances there and entitled the employee to reimbursement for “lease breaking” expenses through mid-April. However, the board alternatively addressed the fact that, regardless of the notice issue, the agency, which was responsible for scheduling and moving the employee’s HHG, for various reasons did not move and could not have moved that HHG until mid-April. The board determined that, even if the employee had given earlier notice to the landlord, “the Government would [still] have been obligated to move and store her furniture from the end of the lease obligation in” mid-March until the HHG could be moved in mid-April. *Id.* at 143,338. Because the agency was responsible for the employee’s HHG transport and the costs associated with it, the agency was obligated to pay the lease expenses for the apartment in which the HHG was kept. *Id.*

BLM argues that Ms. Stanley-Wolfe’s two-and-a-half week delay in notifying her landlord that the HHG would be removed from the apartment on March 28 (waiting until March 7 to tell the landlord about a move that she knew about on February 17) precludes *any* recovery for unexpired lease expenses, asserting that the agency “cannot possibly know how much money in lease breaking fees might have been saved had Ms. Stanley-Wolfe acted prudently.” Agency Response at 3. Although it acknowledges that “there would have been some reimbursement of rent due her from the time she vacated the apartment [on January 8] until she could have had the goods moved, as the delay in ordering the shipment was not her fault,” it believes that she can recover nothing here because she “made no attempt to mitigate costs.” *Id.* Although prompt termination notice to a landlord (once the employee has definite knowledge of when he or she will need to vacate the rental unit) is one of the prerequisites listed in the FTR for unexpired lease expense reimbursement, 41 CFR 302-11.7(c), that prerequisite bars reimbursement only if and to the extent that a termination notice delay contributes to the incurrence of expenses. 41 CFR 302-11.7(c); *see David Robbins*, B-175916 (July 3, 1972) (delay in providing termination notice did not contribute to lease expenses because, even with timely notice, tenant still would have forfeited the security deposit because of early lease termination).

We cannot accept BLM’s argument that a termination notice delay beginning in mid-February 2017 would bar expenses that Ms. Stanley-Wolfe reasonably incurred *prior*

to that date or, for that matter, through the date that BLM left the HHG in the Boulder City apartment. Under the mitigation doctrine, a non-breaching party to a contract who fails properly to attempt to mitigate damages following a contract breach is barred from recovering from the breaching party those costs “which could have been avoided” through reasonable mitigation efforts. *Sylvan B. Orr v. Department of Agriculture*, CBCA 5299, slip op. at 15 (Sept. 29, 2017). Although an employee breaking his or her lease to transfer to a new duty station is the breaching rather than the non-breaching party under the lease contract, the FTR applies the same mitigation principle to employees seeking reimbursement from the Government for their lease breaking costs. See *Alphonso S. Hamilton*, 16-1 BCA at 177,607; 41 CFR 302-11.7. As a result, lease termination costs that “should have been avoided in the first stance” by reasonable mitigation efforts “may not be reimbursed,” *John M. Taylor*, 60 Comp. Gen. 528, 530 (1981), but the employee remains entitled to recover otherwise reimbursable costs that would have been incurred despite any failure to mitigate. *David Robbins*, B-175916. BLM left Ms. Stanley-Wolfe’s HHG in the Boulder City apartment until March 28, 2017, and no new tenant could have moved in prior to that date. Any delay by Ms. Stanley-Wolfe in providing notice to her landlord of a definite move-out date has no effect upon her entitlement to reimbursement of lease expenses through the end of March.

BLM also argues that, when the BLM HHG shipment coordinator contacted her on February 17, 2017, Ms. Stanley-Wolfe should have selected an earlier HHG pickup date than March 28, 2017, and that Ms. Stanley-Wolfe should bear the costs associated with her selection of the later date. Yet, Ms. Stanley-Wolfe picked a date from the available options that the BLM HHG shipment coordinator gave her. Nothing was said at that time suggesting that some of the dates that BLM offered would cost Ms. Stanley-Wolfe money or that any of the dates offered were viewed by BLM as too far in the future. Particularly in light of the BLM relocation office’s delays in fulfilling its obligations to schedule HHG transport and the fact that, during the period of the BLM relocation office’s delays, Ms. Stanley-Wolfe’s new duty station employer scheduled work and travel activities for Ms. Stanley-Wolfe, we do not find Ms. Stanley-Wolfe’s selection of the March 28 date for HHG shipment unreasonable or imprudent.

BLM further argues that, possibly, Ms. Stanley-Wolfe’s son was using the apartment with her permission during the period from January through March 2017, which, it argues, indicates that Ms. Stanley-Wolfe never vacated, and never intended to vacate, the apartment. We recognize that, “[s]o long as a member of an employee’s immediate family remains in occupancy of permanent quarters which are leased at the old station, the employee continues to receive the benefit of the lease and that part of the rent paid for the days of the month during which the apartment was last occupied may not be reimbursed.” *Mark J. Musaus*, 11-1 BCA at 171,054 (quoting *Robert T. Haas*, B-243017 (Aug. 6, 1991)). Here, though,

BLM has no evidence to support its speculation. We reject abject supposition as a basis for denying a relocation claim.

Ms. Stanley-Wolfe is entitled to rent and utilities that she paid for the Boulder City apartment through the end of March 2017.³

B. Lease Expenses In April 2017

Ms. Stanley-Wolfe's request for lease expenses for the month of April 2017, after her HHG was removed, is more problematic.

As previously discussed, on February 17, 2017, Ms. Stanley-Wolfe knew that her HHG would be removed from the Boulder City apartment on March 28, but she waited two and-a-half weeks – until March 7 – before giving her landlord a definite date for vacating the apartment.⁴ The landlord immediately began advertising the apartment for rent the day that it received Ms. Stanley-Wolfe's notice. Nevertheless, the landlord informed her that her lease did not expire until April 30 and that she would remain responsible for rent and utilities until that date unless the landlord was able to rent the apartment to someone else before the end of Ms. Stanley-Wolfe's lease term. Ms. Stanley-Wolfe indicates that the landlord also informed her that she would remain responsible for any damage to the apartment that occurred prior to the April 30 lease termination date.

³ It appears that Ms. Stanley-Wolfe was required to pay her expenses of returning to her old duty station to oversee the HHG transport in late March 2017 and had to take annual leave for the duration of the trip. If true, we note that, as we previously mentioned, an employee who returns “to his old duty station to supervise the shipment of his HHG under a GBL because, due to circumstances beyond his control, he was unable to ship the HHG at the time of his transfer” may be authorized reimbursement of the return trip expenses as a proper TDY assignment. *Richard DeLappe*, 02-2 BCA at 157,887. Nevertheless, because Ms. Stanley-Wolfe has not requested such expenses at this time, we need not evaluate her entitlement to such costs here.

⁴ The agency mistakenly argues that Ms. Stanley-Wolfe's lease was subject to a thirty-day termination notice requirement, meaning that, with notice in March, the lease could not end until April, but that a February notice would have ended the lease in March. The lease actually did not expressly provide for *any* early termination rights before the end of the lease term. The thirty-day notice provision applied only to termination of any month-to-month tenancy created after the lease term ended.

After the BLM-authorized transport company removed Ms. Stanley-Wolfe's HHG from the Boulder City apartment on March 28, Ms. Stanley-Wolfe did not return her apartment keys to the landlord, and she provided the landlord with new contact information at which the landlord could provide her with twenty-four-hour advance notice before showing the apartment, even though, in a prior letter, the landlord had informed her that it would provide her such notice up until she vacated the apartment on March 28. Under the terms of her lease, Ms. Stanley-Wolfe was required to deliver her keys to the landlord upon lease termination. Her actions in retaining the keys and providing new advance notice contact information are inconsistent with the idea that she had broken her lease effective March 28, 2017.

Ms. Stanley-Wolfe asserts that she kept the keys and gave new contact information because the landlord had informed her that she would remain responsible for any damage to the apartment until April 30, 2017, unless it was re-rented prior to that date.⁵ Although that explanation might, in some circumstances, justify continued lease expense reimbursement, Ms. Stanley-Wolfe also acknowledges that she stayed in the apartment from April 19 to 21, 2017, while she was on nearby TDY with the Air Force. By that time, she supposedly had already vacated the apartment. Although she suggests that her action in staying in the apartment benefitted the Government because she did not have to incur lodging costs during her TDY, any reduction in TDY reimbursements benefitted the Air Force, not BLM. In addition, she had left cleaning supplies behind in the apartment, planning to clean it, in accordance with the lease provision requiring cleaning prior to lease termination, in mid-April, an action inconsistent with the idea that she was vacating the apartment on March 28. The amount of control that Ms. Stanley-Wolfe retained over the apartment, as well as her actual use of the apartment, in April 2017 preclude us from allowing reimbursement of lease expenses for that month. *See Patsy S. Ricard*, 67 Comp. Gen. at 289 (no reimbursement where the employee "continued to occupy the leased premises").

Further, Ms. Stanley-Wolfe's two-and-a-half-week delay – from February 17 to March 7, 2017 – in disclosing the March 28 HHG removal date to the landlord means that the landlord lost time to show the apartment to a potential new tenant seeking an April rental. Although Ms. Stanley-Wolfe had no express contractual right to end her lease before April 30, the landlord, once it knew of an impending early abandonment or termination, had an affirmative obligation under Nevada law to make reasonable efforts to re-rent the unit, Nev. Rev. Stat. § 118.175 (2016), and execution of a new lease effective at some point in April would have eliminated or reduced Ms. Stanley-Wolfe's rental costs for the month of

⁵ The agency speculates, without proof, that the claimant's son may have been staying in the apartment throughout the month of April 2017. We do not rely on speculation.

April. We cannot know whether, with the extra two-and-a-half weeks of time, the landlord could have found a new tenant with an April lease, but it is the claimant's burden to establish the Government's legal liability for costs claimed and his or her right to payment. *Simeon A. Milton*, CBCA 5565-RELO, 17-1 BCA ¶ 36,753, at 179,125; *Mohammed Amin Fekrat – Reconsideration*, B-212316 (June 20, 1986). That burden includes an obligation to establish that, had Ms. Stanley-Wolfe provided "prompt" notice on or after February 17, 2017, no replacement tenant would have been found for April 2017. The FTR provision requiring the employee "promptly" to provide termination notice after definite knowledge of a transfer, 41 CFR 302-11.7(c), generally means that the employee, once he or she has such knowledge, must be "ready and quick to act as occasion demands; immediately or instantly at hand." *Webster's New Twentieth Century Dictionary Unabridged* 1441 (2d ed. 1975); see *Desmond A. Pridgen*, GSBKA 14121-RELO, 97-2 BCA ¶ 29,146, at 144,982 (limiting employee's lease break award to rental costs that employee would have incurred had he provided notice on the same day that he gained definite knowledge of transfer). Nothing in the record here indicates that there was a justification for the claimant's disclosure delay, and the claimant has not established that the delay had no negative effect upon the tenant search process.

Decision

For the foregoing reasons, Ms. Stanley-Wolfe's claim is granted in part. Ms. Stanley-Wolfe is entitled to reimbursement of \$2250 for rent paid for the Boulder City apartment for the months of January, February, and March 2017, as well as reimbursement for utility charges that Ms. Stanley-Wolfe paid for those months. BLM shall calculate the amount of claimed utility costs applicable to the January-to-March time period. Ms. Stanley-Wolfe's claim for rent and utility charges in April 2017 is denied.

HAROLD D. LESTER, JR.
Board Judge