



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 27, 2019

CBCA 6352-RELO

In the Matter of GREGORY S.

Gregory S., Claimant.

Brian F. Binney, Office of the General Counsel, Fiscal and Contract Law Unit, Federal Bureau of Investigation, Department of Justice, Washington, DC, appearing for Department of Justice.

HYATT, Board Judge.

Claimant, Gregory S., was recently transferred by the Federal Bureau of Investigation (FBI).¹ He seeks the Board's review of the FBI's denial of his request for an extension of the authorized time period in which he could receive an allowance for temporary quarters subsistence expenses (TQSE).

Background

Claimant, an employee of the FBI, was authorized relocation costs, including a house hunting trip and sixty days of TQSE, incident to the transfer. The house hunting trip was shortened to a long weekend at the end of June 2018 because of claimant's work obligations. Nonetheless, during this brief visit, claimant entered into a contract to purchase a home under construction, with a completion date of December 28, 2018. Although claimant was aware that the closing date for this house was several months after the sixty days of TQSE would expire, he explains that he entered into the contract because this house was affordable for the family budget, was located within a reasonable commuting distance from his new duty

¹ For security reasons relevant to claimant's work for the FBI, we refer to him only as "Gregory S." or "claimant" in this decision.

station, and the builder had assured him that construction would begin immediately and would be completed well ahead of the projected completion date. With this understanding, claimant was willing to incur costs beyond the sixty days of TQSE that has been authorized.

Claimant arrived at the vicinity of his new permanent duty station (PDS) on July 30, 2018, and began to occupy temporary quarters. After his arrival, claimant learned that the contractor building his new residence had failed to acquire permits, that construction of the new house had not started, and that completion of the house would be significantly delayed. He canceled the contract and resumed the search for a permanent residence. On August 28, 2018, he entered into a second contract for construction of a new home, with a closing date of October 22, 2018. Claimant and his family moved into the new house on October 25, 2018.

Because of the difficulties he had encountered with the first home builder, claimant requested an extension of TQSE for the period from September 28, 2018, to October 22, 2018, explaining that the need for an extension was attributable to unanticipated delays caused by the necessity to cancel the initial contract, locate another suitable home and restart the financing process, all circumstances he considered to be beyond his control. The FBI rejected this request, pointing out that under the Federal Travel Regulation (FTR) and the agency's own travel policy guide, claimant had not presented a "compelling reason" to grant the extension of TQSE.

Claimant asked the agency to reconsider its position. He elaborated that had the initial contractor commenced construction in the timely manner that claimant expected, he would have been able to move into the house by late November. Claimant also explained that his options were limited. As a family of six with a single income it was difficult to find acceptable housing in his price range that was also within a reasonable commuting distance. He also needed to secure a guaranteed loan from the Department of Veterans Affairs (VA) and the earliest date he could arrange for occupying a permanent residence was October 22, 2018. The agency reviewed its decision in light of the additional information and still concluded that the request did not satisfy the conditions for approving an extension of TQSE.

Discussion

TQSE is intended to reimburse, at least in part, the reasonable subsistence expenses of employees who relocate in the interest of the government and find it necessary to occupy temporary lodging incident to the move. By statute, 5 U.S.C. § 5724a(c) (2012), federal agencies are authorized to pay the subsistence expenses of a transferring employee who is occupying temporary quarters incident to a transfer in the interest of the Government for a period of up to sixty days, and may reimburse such expenses for up to an additional sixty

days if the designated agency official determines there are compelling reasons for the continued occupancy of temporary quarters. Whether to authorize TQSE is a matter solely within the discretion of the agency; there is no automatic entitlement to this benefit. *Peter E. Godfrey*, CBCA 4940-RELO, 16-1 BCA ¶ 36,250, at 176,860. Once an agency has authorized TQSE, it retains broad discretion to decide whether “to grant extensions of TQSE,” and that exercise of discretion “will not be overturned unless that decision is found to have been arbitrary and capricious.” *Rajiv R. Singh*, GSBCA 16892-RELO, 06-2 BCA ¶ 33,418, at 165,672; *accord Lawrence K. Hoskin*, CBCA 5521-RELO, 16-1 BCA ¶ 36,548, at 178,030; *Stephen J. Collier*, CBCA 4395-RELO, 15-1 BCA ¶ 35,979, at 175,800.

Once an employee has been granted an initial sixty days of TQSE, the Federal Travel Regulation (FTR) limits extensions of this benefit to a total of 120 days, providing that the agency determines that a compelling reason for continued occupancy of temporary quarters exists. *Collier*, 15-1 BCA at 175,800; *Kevin D. Reynolds*, CBCA 2201-RELO, 11-1 BCA ¶ 34,756, at 171,061. The FTR defines the “compelling reasons” necessary to extend TQSE beyond the first sixty-day period as “an event that is beyond [the employee’s] control and is acceptable to [the] agency.” 41 CFR 302-6.105. Examples of such compelling reasons include an employee's inability to “occupy [the] 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),” the inability “to locate a permanent residence which is adequate for [the] family's needs because of housing conditions at [his] new official station,” or delayed HHG transportation and/or delivery resulting from “strikes, customs clearance, hazardous weather, fires, floods or other acts of God, or similar events.” *Id.* 302-6.105(a), (b), (c); *Hoskin*, 16-1 BC A at 178,030. The FTR confers considerable and broad discretion on the authorizing official to determine what constitutes a “compelling reason” to justify an extension of TQSE and the Board will not overturn that decision unless it is arbitrary, capricious, or contrary to law. *Charles J. Shedrick*, CBCA 5966-RELO, 16-1 BCA ¶ 36,431;

Here, the agency considered all of the points made by claimant and decided that he had not demonstrated a “compelling reason” to extend TQSE beyond the initial sixty-day period. The authorizing official concluded that when claimant entered into the first contract to purchase a home, the projected closing date was well beyond the sixty-day period for occupancy of temporary quarters. Although claimant did not anticipate the specific circumstances giving rise to the breach of that contract, he knew that he would likely need to occupy temporary quarters after the expiration of the sixty-day period that was authorized. As the FBI has pointed out, the difficulties giving rise to the need to resume the search for a permanent residence in fact enabled claimant to reduce the time in which he needed to occupy temporary quarters. The agency consequently determined that the requisite “compelling reason,” to support an extension was lacking. While the agency may have

decided differently, its decision and exercise of discretion was supportable. *Melinda Slaughter*, CBCA 754-RELO, 07-2 BCA ¶ 33,633.

Decision

In the circumstances, we have no basis to find that the FBI acted arbitrarily or capriciously, or abused its discretion in denying claimant's request. Accordingly, the claim is denied.

Catherine B. Hyatt

CATHERINE B. HYATT

Board Judge