



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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February 25, 2022

CBCA 7256-RELO

In the Matter of IVAN A.

Ivan A., Claimant.

Jonathan S. Thow, Assistant Counsel, Sixth Fleet, Naval Forces Europe-Africa, Department of the Navy, FPO Area Europe, appearing for Department of the Navy.

**LESTER**, Board Judge.

The Department of the Navy (Navy) authorized claimant to receive a temporary quarters subsistence allowance (TQSA) pursuant to the Department of State Standardized Regulations (DSSR) for a ninety-day period ending July 16, 2021. Claimant asks the Board to review the Navy's denial of his request for a nine-day extension of TQSA beyond that date, citing concerns about the COVID-19 virus that he asserts justify the extension. Because agencies have broad discretion in deciding whether to grant such extensions, we must deny claimant's request.

Background

Claimant arrived for a tour of duty in his new duty station in Italy on April 18, 2021. At that time, claimant had not received the COVID-19 vaccine. In accordance with required protocols in Italy, claimant quarantined in his hotel for fourteen days after his arrival. At some subsequent point, he received a first and then a second dose of a vaccine, completing the two-shot regimen on June 7, 2021. Claimant reports that, by June 21, 2021, he had completed the two-week waiting period necessary for the vaccine to achieve maximum effectiveness, and he began house hunting in the area on June 25, 2021. Between June 25 and July 14, claimant visited at least nine properties, two of which he had located through the assistance of co-workers at the Navy. He found an acceptable residence on July 14,

signed a contract on July 21, and moved into the residence on July 26, 2021. His ninety-day TQSA entitlement concluded on July 16, 2021, ten days before he moved into his long-term residence.

Claimant asserts that, when he arrived in Italy in April 2021, COVID-19 infection rates were significant. Because of a prior health issue that his doctor believed could make him more susceptible than others to COVID-19 complications, claimant's doctor recommended that claimant be fully vaccinated before placing himself into situations in which he might be exposed to the virus. Claimant asserts that, as a result, he was unable to begin searching for housing in Italy until after he had achieved full vaccine protection in late June 2021.

On June 25, 2021, the same day that claimant began looking for permanent housing, claimant asked his supervisors at the Navy about a possible extension of his TQSA. Claimant made a formal request for a nine-day TQSA extension – to and including July 25, 2021<sup>1</sup> – on September 28, 2021. The Deputy Chief of Staff of claimant's agency disapproved that request on October 20, 2021.

In its submission to the Board responding to claimant's claim, the Navy represents that claimant began reporting to work in person at a Navy office immediately after completing his mandatory self-isolation period on May 3, 2021. The Navy asserts that, “[u]nlike in the winter and spring of 2020 when COVID locked down Italy hard for months, shutting down the Navy Housing Office and forcing realtors to stop work, there were no such restrictions in place in 2021 when this employee arrived.” Agency Response ¶ 3. “When the employee arrived in April,” the Navy asserts, “it was business very near to normal. The Navy Housing Office was open, fully manned, realtors were showing houses, and there was no shortage of inventory to show.” *Id.* The Navy argues that claimant has not explained why he was able to come to the office during May and early June 2021 but not to search for housing (either online or in person) during that period.

The Navy also complains that claimant's housing dilemma was foreseeable before he accepted the Italy assignment. It asserts that, when claimant applied for the job, the existence of COVID-19 and its spread was common knowledge. “In the midst of a well-known COVID pandemic, this employee – knowing of his asserted medical history – chose to apply for, to interview for, to accept a job offer from [the] Navy in Italy, to travel to Italy, and to report to a new job all without being vaccinated.” Agency Response ¶ 5. Nothing happened during claimant's transfer to Italy that claimant should not have expected when he accepted

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<sup>1</sup> Claimant did not request TQSA for July 26, 2021, the day that he moved into his new residence.

the job. The Navy suggests that, in such circumstances, it was folly for claimant to start his job in Italy knowing that he would delay the start of his housing search and that he would require more than the ninety-day TQSA period that the Navy had authorized.

By order dated January 31, 2022, the Board asked claimant, if he elected to submit a reply to the Navy's response, to address the circumstances that made him feel unsafe looking for housing in May and mid-June 2021 while he was, at the same time, working in person at the Navy office. The Board also asked claimant to address whether online searching for housing in Italy was available to him during that period of time. Claimant elected not to reply to the Navy's response.

### Discussion

“By statute, TQSA is intended to pay for reasonable subsistence expenses of an employee and immediate family members while occupying temporary quarters when relocating to or from an overseas location.” *Michael J. Krell*, GSBICA 13710-RELO, 98-2 BCA ¶ 30,050; *see* Overseas Differentials and Allowances Act, 5 U.S.C. § 5923(a)(1) (2018). The period for TQSA is not to exceed “90 days after first arrival at a new post of assignment in a foreign area or a period ending with the occupation of residence quarters, whichever is shorter.” 5 U.S.C. § 5923(a)(1)(A). Nevertheless, that ninety-day maximum period may “be extended for not more than 60 additional days if the head of the agency concerned or his designee determines that there are compelling reasons beyond the control of the employee for the continued occupancy of temporary quarters.” *Id.* § 5923(b). DSSR 122.2 and 123.34 implement these statutory provisions.

“As has long been held, the provision of allowances under the Overseas Differentials and Allowances Act and the DSSR is a discretionary matter.” *Sean P. Tweed-Kent*, CBCA 5528-RELO, 17-1 BCA ¶ 36,797. Although an agency's discretion to deny a TQSA extension request is not unfettered, *Charles A. Houser*, CBCA 2149-RELO, 11-1 BCA ¶ 34,769, we can overturn a denial only if it was arbitrary and capricious or otherwise in violation of law. *Raymundo R. Lomboy*, CBCA 5979-RELO, 18-1 BCA ¶ 37,079. “Accordingly, our inquiry is limited to whether the agency reasonably exercised its discretion” in finding a lack of compelling reasons beyond the control of the employee that justified the employee's inability to find housing within the original ninety-day period. *Id.*

The agency's decision finding that delays in locating long-term housing were within claimant's control is not arbitrary and capricious. The Navy represents that real estate offices were open when claimant began working in person at his Navy office in early May 2021, and claimant has not explained why it was safe for him to work in the office but not to look for housing. Further, claimant has not explained why, to eliminate or at least minimize contact with other people, claimant could not have utilized online search engines in May and June

2021 to locate long-term housing. Although claimant, before committing to long-term housing, might have preferred to have inspected various rental properties in person after full vaccination rather than relying on recommendations of others and online search results, the agency cannot be held financially responsible for the cost impact of exercising that preference.

Further, claimant had to be aware when he accepted the job assignment in Italy of the implications of the already widespread COVID pandemic and the special measures that he would need to take to protect himself. In other circumstances, we have characterized delays that are “beyond the reasonable control” of a contractor as excluding delays that were foreseeable at the time of contracting. *ORSA Technologies, LLC v. Department of Veterans Affairs*, CBCA 7142, slip op. at 11 (Jan. 20, 2022). In the same way, the Navy was not arbitrary or capricious in finding that the delays in claimant’s commencement of his housing search, for reasons that claimant should have foreseen when accepting the job in Italy without first having been vaccinated or at least begun the vaccination process, were not “compelling reasons beyond the control of the employee” as that phrase is used in 5 U.S.C. § 5923(b). Claimant did not raise his foreseeable concerns with and request additional TQSA days from the Navy before he accepted his position, and he has identified nothing unexpected that happened after he began his tour that caused unexpected delays or difficulties.

### Decision

For the foregoing reasons, we find that the Navy’s disapproval of claimant’s request for nine additional days of TQSA was not arbitrary or capricious. As a result, claimant’s TQSA extension request is denied.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge