



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 12, 2019

CBCA 6270-RELO

In the Matter of JANETTE L. DANIELS

Janette L. Daniels, Tacoma, WA, Claimant.

Kay K. Wakatake, Office of the Center Judge Advocate, Madigan Army Medical Center, Takoma, WA, counsel for Department of Defense.

VERGILIO, Board Judge.

The agency had authorized a relocating civilian employee to receive temporary quarters subsistence expense (TQSE) reimbursement for thirty days. The claimant sought to extend the period for an additional thirty days. The agency applied a “compelling reasons” test and denied the extension. The agency relied upon an inapplicable regulation and used a test more stringent than necessary. The agency must make a determination in accordance with regulation and agency guidance.

With a report date of June 10, 2018, a civilian employee, Janette L. Daniels, claimant, transferred from outside the continental United States to a duty station in the United States, under the Department of Defense priority placement program (PPP). The agency authorized the reimbursement of TQSE actual expense for a period of thirty days. Within that period, the claimant sought a thirty-day extension of TQSE reimbursement. The agency sought to determine if a compelling reason existed to grant the extension. Finding no compelling reason for an extension, the agency ultimately denied the requested extension. The agency has explained that it has the discretion to determine what constitutes a compelling reason to support a requested extension. The claimant here seeks to have the Board conclude that she is entitled to a thirty-day extension of the TQSE period.

The Federal Travel Regulation (FTR), 41 CFR Ch. 302 (2018), and Joint Travel Regulations (JTR), in effect on June 10, 2018, apply to this case. The FTR specifies that an agency may authorize actual expense TQSE in increments of thirty days or less, not to exceed sixty consecutive days. If an agency determines that there is a compelling reason to occupy temporary quarters beyond sixty days, it may authorize an extension. FTR 302-6.104. Compelling reasons are discussed in FTR 302-6.105. Also, the FTR dictates agency responsibilities. FTR 302-6.300 to -6.303.

Temporary quarters should be used only if, and only for as long as, necessary until the employee and/or his/her immediate family can move into permanent residence quarters. You must administer the TQSE allowance to minimize or avoid other relocation expenses.

FTR 302-6.300. An agency may authorize a TQSE allowance on an individual-case basis when use of the quarters is justified in connection with the transfer. FTR 302-6.302.

Under the JTR, the TQSE is a non-discretionary allowance for this claimant relocating under the PPP. JTR 542, 54204. The JTR largely mirrors the FTR in the other respects. An authorizing official determines the time period authorized on a case-by-case basis. JTR 54206. The official may authorize TQSE for sixty or fewer days, but only for the time that temporary lodging is required. The official may authorize or approve an additional sixty or fewer days to total no more than 120 days, if the employee provides acceptable written justification and documentation. For the additional period (that beyond an initial sixty days), the official may authorize extensions only if the official determines that there are compelling reasons for the continued temporary lodging occupancy due to circumstances beyond the civilian employee's control. JTR 54206-A.2.

The regulations do not establish the compelling reasons test for a TQSE period of sixty or fewer days. The agency has identified no agency policy or guidance that dictates use of the test for the initial sixty-day period. The required analysis has a different focus. The agency has made no determination on the question of whether temporary lodging was required beyond the thirty days authorized. For example, there is no indication that the agency considered for this claimant the time needed to select, close on, and move into a suitable residence, and the time household goods might reach the residence. Because the agency based its denial of the requested extension on an incorrect standard, now it must make a determination in accordance with the regulations.

The claimant prevails in invalidating the determination by the agency, which now must make the required determination using the appropriate standard.

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge