



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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January 30, 2009

CBCA 1241-RELO

In the Matter of HERBERT AUSTIN

Herbert Austin, Fort Worth, TX, Claimant.

Cindy Osif, Supervisor - Travel and Relocation Payments, National Business Center, Department of the Interior, Denver, CO, appearing for Department of the Interior.

**HYATT**, Board Judge.

Claimant, Herbert Austin, an employee of the Small Business Administration (SBA), requests this Board's review of the denial by the National Business Center, Department of the Interior, of certain expenses he incurred in connection with his permanent change of station (PCS) from SBA's New York, New York District, to its Dallas, Texas District.<sup>1</sup>

Background

Claimant transferred to the Dallas, Texas area in February 2008. He states that he believes he is entitled to three specific items of expense that were disallowed. One of these items is the amount of \$697.60, representing the cost he incurred in terminating a short-term lease for temporary quarters he and his family occupied at the new duty station. He had a three-month lease of temporary quarters, but remained in temporary quarters for only seventy-five days.

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<sup>1</sup> The National Business Center of the Department of the Interior processes claims for relocation expenses of SBA employees.

Mr. Austin also claims the amount of \$1000 for miscellaneous expenses, an amount that is authorized under the Federal Travel Regulation (FTR). 41 CFR 302-16 (2007) (FTR 302-16). He requested this amount in the voucher he submitted to the agency for reimbursement of real estate transaction expenses incurred in purchasing a new residence at the new duty station and states that he does not understand why the agency denied this portion of his claim.

The third item for which Mr. Austin seeks recovery is the amount of \$7060 paid to undertake various repairs to the new home required as a result of an inspection visit made by the homeowners association. Mr. Austin states that he and his spouse were attempting to expedite their move from temporary to permanent quarters and agreed to assume responsibility for the repairs. Mr. Austin further explains that they could not have purchased the home without the vetting and approval of the homeowners association and could not pass these costs on to the seller since the seller had already agreed to assume other items of cost relating to association fees.

### Discussion

#### Unexpired Lease Expense

The first item that Mr. Austin claims is the cost he incurred in breaking the three month lease he entered into upon moving to the Dallas area. He explains that when he made the move to Dallas he was unable to find a landlord willing to enter into a lease of less than three months. Although the temporary quarters subsistence expenses (TQSE) allotment for sixty days would have covered the month-to-month rent for that period, the three month lease resulted in considerable savings and, at the time he entered into the lease, Mr Austin expected he would need, and the agency would approve, another thirty days in temporary quarters. He received a fifteen-day extension and, immediately following that, moved into his new home. Claimant thus had to forfeit the remaining fifteen days of rent in the amount of \$697.60.

The agency contends that there is no authority that permits reimbursement of this amount as a lease-breaking expense. In support of this position, the agency directs us to FTR 302-11.7, which only permits reimbursement of the expense of breaking a lease at the old official duty station. There is no direct authority for reimbursing such an expense when it is incurred at the new duty station.

Even so, it appears likely, based on the record before us, that claimant may be entitled to some portion or all of the forfeited rental payment. Once Mr. Austin moved to the new home, after seventy-five days in temporary quarters, he was occupying permanent quarters

and the eligibility for TQSE was extinguished. Thus, the agency cannot reimburse this expense by paying additional days of TQSE. The Board has recognized, however, that the amount of TQSE payable for the days that an employee actually occupied TQSE may be adjusted under some circumstances. For example, a lease termination expense may be deemed to be an actual lodging expense whether paid through forfeiture of a deposit or otherwise. By entering into a three-month lease, Mr. Austin was able to obtain a significantly lower rate for lodging. Under these circumstances it is permissible to recalculate the daily lodging rate by dividing the full three month rental charge by the seventy-five actual days of occupancy. Mr. Austin may then be reimbursed all or part of the \$697.60 that he incurred so long as the additional daily amount does not exceed the maximum daily reimbursement authorized for TQSE under FTR 302-6.100-102.<sup>2</sup> See *Lorraine M. Kummerfeldt*, GSBCA 15039-RELO, 00-1 BCA ¶ 30,750; *Glenn Baker*, GSBCA 14221-RELO, 98-2BCA ¶ 29,856-RELO; *Kevin Gjertsen*, GSBCA 14298-RELO, 98-1 BCA ¶ 29,604.

#### Miscellaneous Expense Allowance

The regulations provide for the payment of \$1000 as an allowance to defray miscellaneous expenses associated with relocating. FTR 302-16. Mr. Austin claimed the miscellaneous expense allowance of \$1000 on the voucher submitted on May 20, 2008, for reimbursement of expenses of purchasing a new home in Texas. He previously included this allowance on the voucher he submitted on May 5, 2008, for reimbursement of costs associated with selling his former residence in New Jersey. That voucher, including the claimed miscellaneous expense allowance, was paid in full on May 8, 2008. The agency correctly notes that this allowance is paid only once and that no further reimbursement is due.

#### Cost of Repairs to the House

The agency also correctly disallowed Mr. Austin's claim for \$7060 in repair costs that were incurred in connection with the purchase of a residence at the new duty station. The FTR expressly provides that operating or maintenance costs included among residence transaction expenses are not recoverable in connection with either the sale or purchase of a residence. FTR 302-11.202(f). The miscellany of repairs included in the itemized bill

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<sup>2</sup> The agency appears to recognize that the TQSE lodging rate payable for the 75 days in which temporary quarters were occupied may be adjusted. It states that if Mr. Austin under claimed his temporary lodging expenses he should submit a new travel voucher reflecting the recalculation described above.

provided by claimant<sup>3</sup> are precisely the type of maintenance costs that fall within this provision of the FTR. *See, e.g., Sandra L. Wilks*, GSBCA 15669-RELO, 02-2 BCA ¶ 31,962 (upgrade of wood stove and installation of downspouts); *Janeen H. Rosenberg*, GSBCA 15591-RELO, 01-2 BCA ¶ 31,614 (various costs of repairs and cleaning); *Thomas E. Sullivan*, GSBCA 15453-RELO, 01-1 BCA ¶ 31,339 (plumbing repairs). The fact that claimant had to have the repairs performed at the behest of the homeowners association does not establish an entitlement to reimbursement.<sup>4</sup>

### Decision

Mr. Austin may be entitled to additional TQSE upon recalculation of his lodging expense as discussed above. His other claims are denied.

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CATHERINE B. HYATT  
Board Judge

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<sup>3</sup> The expenses for which reimbursement is sought included such items as upgrades to landscaping, repairs to the roof and exterior walls, replacement of the water heater, installation of downspouts, and repair and painting of the fence.

<sup>4</sup> To the extent that purchasers in the area customarily pay for such repairs, the regulations would authorize payment of the costs of repairs provided that the amount paid was within the range of amounts customarily paid, and the payment was for a required “service” and mandated by federal, state, or local law or by the lender as a condition of purchase. FTR 302-11.200(f)(12). Claimant has not alleged or shown that any of these criteria are applicable here.