



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 19, 2007

CBCA 702-RELO

In the Matter of DONALD E. CONEY

Donald E. Coney, Indianapolis, IN, Claimant.

Cynthia C. Cummings, Senior Associate Counsel, Office of General Counsel, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

HYATT, Board Judge.

Claimant, Donald E. Coney, is a civilian employee of the Department of Defense. He has requested the Board's review of the denial of his request for a sixty-day extension of the period for reimbursement of temporary quarters subsistence expenses (TQSE) under a permanent change of station (PCS) move.

Background

Mr. Coney retired from the United States Air Force in 1994 while stationed in Europe, where he remained. When he transferred to the United States, Mr. Coney had been living in Europe for the prior twenty-three years, first with the military and then as a retiree married to an Italian citizen employed at United States air bases. In 1998, Mr. Coney was hired by the Defense Logistics Agency in Italy. Under the Defense Department's priority placement program, he was transferred to the Defense Finance and Accounting Service (DFAS) in Indianapolis, Indiana, in June 2006.

Prior to issuance of his PCS orders, Mr. Coney was given a worksheet to fill out in conjunction with the move. In completing the worksheet he advised that he planned to buy a house in Indianapolis rather than rent. When he received his PCS orders, authorizing sixty days of actual expense TQSE, he inquired why he had not been allotted 120 days in order to

have sufficient time to find and buy a house. He was told that if he needed more than sixty days he would need to apply to DFAS in Indianapolis for approval of additional time.

Mr. Coney was not familiar with the Indianapolis area and was not able to obtain much assistance with the logistics of the move prior to his arrival at the new duty station. He asserts that the lack of access to such information in advance of the move adversely impacted his search for permanent quarters in the sixty days allotted. In particular, while living in Europe, claimant had acquired two large wall units, each approximately ten feet tall, which were used to store clothing. Because Mr. Coney had been living in Europe for more than twenty years, and was unfamiliar with the type of housing likely to be available at his new duty station, he brought these units with him when he moved to Indianapolis.¹ Although Mr. Coney looked at as many houses as he could, he was not able to find one that would accommodate his wall units within the sixty-day period.

Mr. Coney identified a suitable house and made an offer for it in late August 2006. He was not able to complete the purchase immediately, however, because repairs were required and the sellers wanted a two-week period after closing to move their personal effects. The earliest date that Mr. Coney could move into the house was October 19. His household goods were delivered on October 20.

As a result of the difficulties Mr. Coney encountered in locating permanent quarters, he requested that his TQSE allowance be extended for up to an additional sixty days, to cover the period from August 25 to until he was able to occupy his house on October 20, 2006. In his request for this extension, he explained that he was a first time house buyer and had experienced difficulty locating a house that would accommodate his two large wall units. On March 2, 2007, DFAS denied Mr. Coney's request because his written request for additional TQSE did not provide a "compelling reason to extend the TQSE period."

Discussion

Paragraph C5364 of the Joint Travel Regulation (JTR) provides that an initial period of actual expense TQSE may be authorized for up to sixty days. An additional sixty days of TQSE, not to exceed a total of 120 days, may subsequently be authorized. In making a determination as to whether an extension should be permitted, the authorizing official is required to consider whether compelling circumstances beyond the employee's control justify

¹ Mr. Coney points out that had he received more helpful guidance from either his former agency or from DFAS he would probably not have brought the units with him.

continued occupancy of temporary lodging. The JTR contains the following examples of factors that may be considered to be beyond the employee's control:

- (1) Delayed HHG [household goods] shipment and/or delivery to the new permanent private sector housing due to extended transit time incident to ocean transportation, strikes, customs clearance, hazardous weather, fires, floods, or other Acts of God;
- (2) Delayed occupancy of new permanent private sector housing because of unanticipated problems (e.g., unforeseen delays in permanent private sector housing settlement/closing, or unforeseen short-term delay in new dwelling construction);
- (3) Inability to locate permanent private sector housing adequate for family needs because of new PDS housing conditions;
- (4) Sudden illness, injury, or death of the employee or of an immediate family member; and
- (5) Similar factors.

JTR C5364-B.2(a). The employee is required to provide acceptable written justification and documentation in support of the extension. JTR C5364-B.2(b). Finally, the JTR provides that extensions to the initial period are not automatic and must be held to a minimum. JTR C5364-B.2(c).

The Board has consistently recognized that an agency has considerable and broad discretion to determine what constitutes a "compelling reason" to support an extension, whether those conditions are present, and whether to extend TQSE benefits for periods beyond the initial sixty days. We will not overturn an agency's determination as to an extension of the period unless we find it to have been arbitrary, capricious, or contrary to law. *E.g., Vicky Lynn Tucci*, GSBCA 16826-RELO, 06-2 BCA ¶ 33,366; *Charles A. Nalley III*, GSBCA 16798-RELO, 06-1 BCA ¶ 33,263; *John D. Stringfellow*, GSBCA 16268-RELO, 04-1 BCA ¶ 32,616; *Nora L. Donohue*, GSBCA 15687-RELO, 02-1 BCA ¶ 31,780.

Although Mr. Coney apparently did not receive much guidance from the agency to assist him with the transition to Indianapolis, and he felt that having spent so many years overseas put him at a disadvantage in trying to complete a home purchase within sixty days,

this does not constitute a compelling circumstance similar to those described in the JTR. In this case, we cannot find that the agency's decision not to extend the TQSE period constituted an abuse of discretion.

Decision

The claim is denied.

CATHERINE B. HYATT
Board Judge