



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 23, 2010

CBCA 2089-RELO

In the Matter of DAVID HARGIS

David Hargis, Jonesboro, AR, Claimant.

Rose M. Webb, State Administrative Officer, Natural Resources Conservation Service, Department of Agriculture, Little Rock, AR, appearing for Department of Agriculture.

WALTERS, Board Judge.

Background

The claimant, David Hargis, in conjunction with his permanent change of station (PCS) to a position with the Department of Agriculture's Natural Resources Conservation Service (NRCS) in Jonesboro, Arkansas, was authorized thirty days of temporary quarters subsistence allowance (TQSE) and elected to take TQSE under the fixed rate method in the amount of \$2610. Mr. Hargis also requested and was approved a house-hunting trip from January 27-28, 2010, and was reimbursed for that trip \$580 under the fixed rate pay method in addition to mileage claimed.

According to Mr. Hargis's supervisor at NRCS in Jonesboro, prior to his relocation, Mr. Hargis contacted him and advised him that he "planned on taking up temporary residence in an apartment in order to provide himself time to thoroughly investigate the housing market, so as to make a good choice of permanent residence." In this regard, on January 26, 2010, i.e., even before going on his house-hunting trip, Mr. Hargis contacted a Jonesboro real estate broker "for assistance in finding temporary housing to live in while he searched for a home to buy." According to the broker, although Mr. Hargis intended to secure a month-to-month lease, none was available to him. On February 12, 2010, Mr.

Hargis entered into a six-month lease on an apartment that permitted early termination on thirty days' prior written notice, "with a penalty." He had the Government relocation services contractor pack and ship 8060 pounds of household goods to that apartment on that date. He did not move all of his household goods to the Jonesboro apartment, but rather stored several items, including, among "multiple personal belongings," his boat and a freezer, with a friend in Paris, Tennessee. The friend advises that she also kept Mr. Hargis's dog "until he obtained permanent housing."

On March 10, 2010, after his move to Jonesboro, Mr. Hargis again contacted the broker to search for a permanent home. The broker began showing him houses for sale on March 22. Mr. Hargis's first offer on a home was made on or about April 13, but did not result in a purchase agreement. He entered into a purchase contract for his current home on April 27, 2010, and closed on the property on June 14, 2010. Mr. Hargis provided the required thirty-day notice to terminate his six-month lease early.

The agency refuses to provide Mr. Hargis with TQSE, contending that the apartment he resided in from February through June was not temporary housing. The agency had notified Mr. Hargis in an e-mail message dated February 18, 2010, that, because he had signed a six-month lease, he would not qualify for a temporary quarters allowance. Mr. Hargis challenges this determination and seeks payment of the thirty days of TQSE at the fixed amount of \$2610.

Discussion

The Federal Travel Regulation (FTR) in effect at the time of Mr. Hargis's move defined "temporary quarters" for purposes of TQSE as follows: "The term 'temporary quarters' refers to lodging obtained for the purpose of temporary occupancy from a private or commercial source." 41 CFR 302-6.1 (2009). To determine whether leased quarters are "temporary," the agency is directed by the FTR to consider a number of factors, including the duration of the lease, movement of household goods into the quarters, the type of quarters, the employee's expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters. 41 CFR 302-6.305. Although execution of a long-term lease for a dwelling may be viewed as a clear indication that the employee intends to occupy the rented quarters on other than a temporary basis, even where an employee enters into a year-long lease, this fact, in and of itself, may not necessarily disqualify the employee from reimbursement of TQSE. *Joseph P. Laws*, CBCA 983-RELO, 08-1 BCA ¶ 33,773; *Paul E. Dyer*, GSBCA 13802-RELO, 97-1 BCA ¶ 28,936. All factors called out by the FTR should be considered.

Most importantly, whether quarters are to be classified as “temporary” will “revolve around the employee’s intention at the time he leased the quarters.” *Stephen A. Monks*, GSBICA 15029-RELO, 00-1 BCA ¶ 30,650 (1999). Here, Mr. Hargis, when he entered into the apartment lease, clearly indicated to several individuals, including a friend, his real estate broker, and his new NRCS supervisor, that he intended to occupy the apartment only temporarily and that he would be searching for an appropriate permanent dwelling to purchase in Jonesboro. Though he executed a six-month lease, he had attempted unsuccessfully to find a month-to-month lease, and he made sure the six-month lease expressly allowed for early termination, albeit with a penalty. *Cf. Juan G. Bernal*, CBCA 1648-RELO, 10-1 BCA ¶ 34,331 (2009), at 169,572 (“Mr. Bernal signed a one-year lease without securing any means of breaking the lease.”). Mr. Hargis also was not dilatory in his search for a suitable permanent home and purchased that home within the first four months of lease execution, terminating the lease before its six-month term expired. Although he moved what may have been most of his household goods into the apartment in February, he did store a number of significant items, including a boat and a freezer, with a friend while he sought “permanent housing.” Significantly, having that friend keep his dog in Tennessee while he was securing a permanent dwelling in Arkansas only serves to underscore that he never regarded the apartment as anything but temporary quarters. Under these circumstances, the agency misapplied the regulations in concluding that the apartment in question was a permanent dwelling and in denying Mr. Hargis payment of TQSE.

Decision

Mr. Hargis’s claim is granted. The agency is to pay Mr. Hargis TQSE in the amount of \$2610.

RICHARD C. WALTERS
Board Judge