



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 15, 2011

CBCA 2198-RELO

In the Matter of VINCENT E. THOMISON

Vincent E. Thomison, Indianapolis, IN, Claimant.

Phil Chandler, Human Resources Shared Services Center, Defense Finance and Accounting Services, Indianapolis, IN, appearing for Department of Defense.

GOODMAN, Board Judge.

Claimant, Vincent E. Thomison, is a civilian employee of the Department of Defense. He has asked this Board to review the agency's denial of his request to extend his period of eligibility for temporary quarters subsistence expenses (TQSE) resulting from a permanent change of station (PCS) transfer.

Factual Background

Claimant was issued travel orders to accomplish a PCS from Denver, Colorado, to Indianapolis, Indiana. He was approved for sixty days of TQSE. He states that he used five days at his old permanent duty station (PDS) in Denver and arrived at his new PDS in Indianapolis on January 18, 2010, and began his entitlement to TQSE there on that date. He states further that while he was able to begin searching for permanent quarters upon his arrival, he was not able to find suitable permanent quarters until February 11, 2010, and the quarters he found would not be available until April 26, 2010. He determined the suitability of the permanent quarters based upon what he states was his medical condition and the proximity of the permanent quarters to a hospital, the condition of the neighborhood, and proximity to his duty station.

According to the agency, claimant requested a thirty-eight day extension of the eligibility period after signing a lease to occupy an apartment beginning on April 26, 2010. His request for an extension was based solely on the fact that the apartment that he decided to rent would not be available until April 26, 2010. When he made his request for an extension of the TQSE period, claimant had already agreed to occupy permanent living quarters with the full knowledge that occupancy would not begin until after his approved initial TQSE entitlement period had ended. Claimant provided no evidence to the agency to explain why he was unable to locate other permanent housing during his TQSE period. The agency therefore determined that his decision was based upon a personal preference and did not justify an extension of the TQSE period. On June 14, 2010, the agency denied Mr. Thomison's request for a thirty-eight day extension of his TQSE allowance.

Discussion

Paragraph C5364 of the Joint Travel Regulations (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 continued occupancy of temporary lodging. The JTR contain the following examples of actions 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 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 JTR also provide that extensions to the initial period are not automatic and must be held to a minimum. JTR C5364-B.2(c).

Agencies have broad discretion to determine whether compelling circumstances exist beyond the employee's control, to justify a grant of additional TQSE. We do not overturn an agency's determination unless it is arbitrary, capricious, or contrary to law. *Beverly K. Joiner*, CBCA 1675-RELO, 09-2 BCA ¶ 34,273; *Donald E. Coney*, CBCA 702-RELO, 07-2 BCA ¶ 33,605, and cases cited therein.

Here, the agency determined that claimant's request for additional TQSE was based on his voluntary actions and not beyond his control. There is no indication that he addressed his medical condition with the agency with his request for extension. In his response to the agency's submission in this case, he offers no supporting information as to his medical condition. Based on the record, there is no evidence that this action was arbitrary, capricious, or contrary to law. There is no basis to overturn the agency's decision.

ALLAN H. GOODMAN
Board Judge