



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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May 18, 2012

CBCA 2574-RELO

In the Matter of PAMELA S. BOYD

Pamela S. Boyd, MacDill Air Force Base, FL, Claimant.

Clarence Powell, Budget Analyst, Headquarters Air Force Personnel Center, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

**DANIELS**, Board Judge (Chairman).

When the Department of the Air Force transferred Pamela S. Boyd to MacDill Air Force Base, Florida, it authorized her to receive actually-incurred temporary quarters subsistence expenses (TQSE) for a period of sixty days. Ms. Boyd later asked the Air Force to extend this period by an additional thirty days or until she was able to move into a home she had contracted to purchase, whichever occurred earlier. The agency denied her request, and she has asked us to review the matter.

Background

Ms. Boyd had previously been stationed in Germany. She was not authorized to make a househunting trip to MacDill Air Force Base before being transferred there. She arrived at MacDill on July 29, 2011, and immediately moved into temporary quarters. Her period of eligibility for TQSE thus began on that date and was to expire on September 26.

Even before reporting for duty on August 1, Ms. Boyd started to search for a new home. She and her husband submitted an offer to purchase a house on August 16, and the offer was accepted on August 21.

This house was being sold by its owners under the Homeowners Assistance Program (HAP). Under this program, the Department of Defense “provide[s] financial assistance to offset financial losses of homeowners who need to sell their homes in conjunction with [permanent change of station] moves, base closures, combat injuries, or loss of spouse in the line of duty.” 75 Fed. Reg. 69,871 (Nov. 16, 2010) (prescribing regulations now published at 32 CFR pt. 239). The purpose of this program is “to provide financial stability and increase quality of life for those impacted by the mortgage crisis.” *Id.*

The contract between the Boyds and the sellers provided that settlement would occur “45 calendar days from the date that Seller delivers written notice to Buyer that HAP has approved the Purchase Price and Contract terms, but no later than October 18, 2011, unless Buyer and Seller agree on a different ‘Closing Date’.” The forty-five day period was required by the Boyds’ lender for processing their mortgage loan.

Ms. Boyd and her husband understood in signing the contract that involvement of the HAP would necessarily delay settlement briefly. Their realtor advised them, however, that because most houses in the area were selling for less than the amounts of the mortgage loans on the properties, any HAP delay would likely be shorter than the delay associated with the short sale of other houses.

HAP approval was given on August 26, so pursuant to the contract, settlement should have occurred on October 10. The sellers did not want to vacate the house so soon, however; they refused to settle earlier than October 18.

On September 14, Ms. Boyd asked that the period of her eligibility for TQSE be extended. The Air Force denied her request on the ground that she had signed the contract for the purchase of the house with the knowledge that settlement would occur after the sixty-day period had ended. The agency official explained further, “It was in your control to use the HAP program to complete the purchase of your home which took you outside the initial TQSE period.”

Subsequently, HAP was unable to deliver funds for settlement in a timely fashion, and settlement had to be deferred until October 25.

### Discussion

TQSE “is intended to reimburse [a transferred] employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters.” 41 CFR 302-6.3 (2011). This benefit is granted at the discretion of the administering agency.

*Walfredo C. Mugol*, CBCA 2236-RELO, 12-1 BCA ¶ 34,972; *Christopher Sickler*, CBCA 1010-RELO, 08-1 BCA ¶ 33,825; 5 U.S.C. § 5724a(c)(1) (2006); 41 CFR 302-6.6.

When an agency authorizes actually-incurred TQSE, it may establish a period of eligibility of no more than sixty days. 41 CFR 302-6.104. If the agency “determines that there is a compelling reason for [the employee] to continue occupying temporary quarters after 60 consecutive days, it may authorize an extension of up to 60 additional consecutive days.” *Id.* “A ‘compelling reason’ is an event that is beyond [the employee’s] control and is acceptable to [the] agency. Examples include, but are not limited to “a situation in which the employee “cannot occupy [his] new permanent residence because of unanticipated problems (e.g., delay in settlement on the new residence . . .).” *Id.* 302-6.105. These rules, which are established in the Federal Travel Regulation (FTR), are stated as well in the Department of Defense’s (DoD’s) Joint Travel Regulations (JTR), which implement the FTR with application to DoD employees. JTR C5364.

In denying Ms. Boyd’s request for eligibility for TQSE beyond the initially-authorized sixty-day period, the Air Force noted the appropriate regulation, but did not properly consider whether the facts justified a finding that unanticipated problems, such as delay in settlement on her new residence, required her to remain in temporary quarters for more days than might reasonably have been expected.

– The agency did not consider whether the fact that it had not authorized a househunting trip might have contributed to the length of time required for Ms. Boyd to settle on an appropriate house. (She and her husband surely moved quickly to find such a house once they arrived at her new duty station.) One of the board decisions cited by the JTR for application of the “unanticipated problems” reason for extending the TQSE eligibility period, *John E. Joneikis*, GSBCA 15455-RELO, 01-2 BCA ¶ 31,514, calls attention to this factor.

– The Air Force did not consider whether the delays resulting from involvement of the HAP program might have qualified as an “unanticipated problem.” We note that HAP is a DoD program designed to provide financial stability to DoD personnel who are affected by both the current mortgage crisis and DoD actions, and to increase quality of life for those individuals. Contrary to the understanding of the agency official who rejected Ms. Boyd’s request, HAP is for the benefit of and may be elected by sellers, not buyers. Ms. Boyd had no say in whether the home she purchased was part of this program. HAP involvement clearly delayed settlement twice – from August 21 to 26 and October 18 to 25, a total of twelve days.

- Nor did the Air Force consider whether the Boyds’ realtor was correct in advising that purchasing a house without HAP involvement would likely have necessitated even greater delays in reaching settlement, due to the seller making a short sale.
  
- The Boyds’ lender required forty-five days to process the mortgage loan. The Air Force did not consider whether this was a reasonable length of time, given conditions in the MacDill area during the summer of 2011, or whether other lenders available to the Boyds might have processed loan applications more quickly.
  
- The Air Force also did not consider whether the refusal of the sellers of Ms. Boyd’s new home to honor the contract’s settlement date of October 10, and instead to insist on settlement on October 18, qualified as an “unanticipated problem” justifying extension of the TQSE eligibility period.

We direct the Air Force to reconsider Ms. Boyd’s request, evaluating this time whether any or all of these factors justify extension of the period for some or all of the days between September 26 (when the initial eligibility period expired) and October 25 (when settlement actually occurred).

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STEPHEN M. DANIELS  
Board Judge