



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 21, 2013

CBCA 3413-RELO

In the Matter of JESSE S. FOURMY

Jesse S. Fourmy, Los Angeles, CA, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Springfield, VA, counsel for Department of Justice.

BORWICK, Board Judge.

Was claimant's occupancy of a residence after the completion of his permanent change of station (PCS) temporary or permanent? This is the question posed by the claim for temporary quarters subsistence expense (TQSE) reimbursement of Mr. Jesse S. Fourmy, an employee of the Drug Enforcement Administration (DEA), United States Department of Justice (agency). The agency maintains that claimant's occupancy of that residence was permanent and that he was not entitled to TQSE reimbursement. For the reasons below, we agree with claimant and grant the claim.

Background

On November 16, 2010, the agency reassigned claimant in the interest of the Government from Hilo, Hawaii, to Los Angeles, California. On November 24, 2010, the agency issued claimant a travel authorization granting PCS benefits for himself and his family (wife, four children, and a cat), including two thirty-day increments of TQSE reimbursement. Claimant's reporting date was February 27, 2011, but the agency extended claimant's reporting date to July 3, 2011, to allow his children to complete the school year at claimant's old duty station.

Claimant considered commercial hotels or motels as temporary quarters, but thought them unsuitable for his large family and the cat. Additionally, claimant believed he needed a residential address to ease his children's school enrollment.

Claimant's family was scheduled to arrive in the Los Angeles area on August 15. Consequently, claimant sought a temporary rental house for a sixty-day TQSE period commencing on or about that date, but could not find a landlord who would be willing to rent to him for that short a period. In August 2011, claimant had found a three-bedroom house for rent in San Pedro, California, for what he thought would be temporary quarters. The house has one master bedroom, which claimant's four children eventually occupied, and two other bedrooms, one of which was used for storage and the other used by claimant and his spouse. The kitchen is described as "tiny" and has no dishwasher.

Claimant requested a sixty-day lease for that house to coincide with his TQSE period, but the landlord was hesitant, as the other landlords had been, to rent to claimant for that short a period. On August 15, 2011, the landlord faxed a lease to claimant; the lease was for a term of ten and one-half months starting on August 15, 2011, and ending on June 13, 2012, for a total rent of \$26,250. However, under the terms of the lease, claimant was to pay \$8662 immediately for thirty days of temporary housing at \$286.75 per night and on September 14, 2011, he was to pay \$6583 for an additional thirty days of temporary lodging at \$219.45 per night. Those amounts matched claimant's maximum lodging entitlement for TQSE for the respective periods.

On August 25, 2011, three-quarters of claimant's household goods (HHG) were delivered from claimant's old residence in Hawaii to Los Angeles. Claimant was surprised at the early shipment from Hawaii; consequently, claimant received the HHG at his rental residence, but, according to him, "basically kept everything boxed up," including the children's clothes. Apparently, the only items from the HHG shipment he used were the children's toys and beds. Additionally, while at the residence, claimant did not register his vehicles at that address, did not subscribe to local phone or cable TV service, and did not open a bank account at a local bank.

Claimant submitted his first voucher for TQSE reimbursement on September 14, 2011. The agency rejected the voucher because it considered claimant's occupancy to be permanent based upon claimant's signing a long-term lease and delivery to the residence of his HHG. On September 23, 2011, claimant and his landlord shortened the lease term to sixty days, with rent again equivalent to claimant's maximum lodging entitlement for TQSE. The parties voided the long-term lease. Claimant resubmitted his voucher on the same day; on October 13, the agency again rejected the voucher.

Claimant submitted a voucher for the second sixty-day period of TQSE, which the agency rejected on December 1, 2011, for the same reasons it had rejected the first voucher. The agency maintained that claimant had not made sufficient efforts to find a permanent

residence that would persuade the agency that claimant intended his existing rental residence to be truly temporary.

To support its review, the agency cites only one attempt by claimant to find a permanent residence. On August 18, 2011, claimant sent an e-mail message to a lender expressing interest in a short-sale property in San Pedro, California, and asked the bank to send a pre-qualification package or a letter to the realtor. According to supplemental information provided by claimant to the Board, before, during, and after the TQSE period claimant made numerous additional attempts to find permanent housing. From June 2011 through September 2012, claimant subscribed to listings from six different realtors in Orange and Ventura counties, as well as San Pedro, California. From July 2011 through the end of the year, claimant went to many open houses. Claimant found the house that would eventually become his permanent residence on December 3, 2011.¹

Discussion

The FTR defines TQSE as: “subsistence expenses incurred by an employee and/or his/her immediate family while occupying temporary quarters.” 41 CFR 302-6.2 (2011). If temporary quarters become the employee’s permanent residence, the employee may receive a TQSE allowance only if he or she shows in a manner satisfactory to the agency that the employee initially intended to occupy the quarters temporarily. *Id.* In determining whether quarters are temporary or permanent the agency is to consider factors such as the duration of the lease, movement of household effects into the quarters, the type of quarters, the employee’s expressions of intent, and attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters. *Id.*

A determination whether quarters are temporary is not susceptible to precise determination. The determination must be based on the facts and circumstances of each case, and should revolve primarily around the employee’s intention at the time he or she leased the quarters. *Shawn P. Crump*, CBCA 971-RELO, 08-1 BCA ¶ 33,781.

In this instance, the agency maintains that since claimant entered into a ten-month lease and moved his HHG into the rental residence, he is disqualified from TQSE reimbursement. The agency applies the regulation mechanically and ignores contrary manifestations of claimant’s intent to occupy the rental residence temporarily.

¹ Since the house was part of an estate sale, it took until August 2, 2012, for probate proceedings to be scheduled by the probate court. By that time, the estate trust had accepted claimant’s offer.

In considering these circumstances, the case of *Michael P. Callahan*, B-246479 (June 9, 1992), is instructive. There, claimant signed a one-year lease for the only house he could afford. The lease contained an early cancellation clause, which claimant was willing to exercise, even though it involved payment of a penalty. Under such circumstances the Comptroller General held that the one-year lease term was not determinative because of the reasons for signing the one-year lease. In our case, reasons existed for claimant's signing the ten-month lease that negated an inference that claimant intended the rental residence to be permanent. Claimant could not find a landlord who initially would enter into a short-term lease. Also, in this case, by mutual agreement of the parties, the lease was indeed amended to shorten the term to sixty days. As far as the shipment of HHG, *Callahan* stated that movement of HHG into a temporary residence leaving fifty percent of the HHG packed negates an inference that the temporary quarters were intended to be permanent. Here, claimant left most of the boxes packed.

The agency ignores or minimizes other circumstances that establish claimant's intention to occupy the rental residence on a temporary basis. The style of the rental residence was not suitable to conveniently provide for a family of six. Claimant did not perform acts that suggested his intention to permanently live in the rental residence, such as registering his automobile there or opening a bank account with a local bank. Additionally, while in the rental residence claimant did not provide his family with local phone and cable television, common accoutrements of modern life.

Significantly, the agency misstates claimant's attempts to secure a permanent residence while in temporary quarters. The agency only acknowledges one e-mail exchange with a realtor and sees that one instance as insufficient indication of claimant's intention to move. As shown in claimant's supplemental submission, however, claimant contacted a number of realtors and went to many open houses to find a suitable residence.

In short, the agency erred in concluding that claimant's lease of the house was temporary. Claimant is entitled to the sixty days of TQSE reimbursement that he was granted for his PCS. Since the agency denied entitlement, we return the matter to the agency for calculation of the exact amount of TQSE reimbursement to which claimant is entitled.

Decision

The Board grants the claim.

ANTHONY S. BORWICK
Board Judge