



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 21, 2015

CBCA 3993-RELO

In the Matter of ZENAIDA CANABA

Zenaida Canaba, Champlain, NY, Claimant.

Andrew R. Falk, Office of Assistant Chief Counsel, Customs and Border Protection, Indianapolis, IN, appearing for Department of Homeland Security.

DRUMMOND, Board Judge.

Claimant, Zenaida Canaba, contests the refusal of the Department of Homeland Security's Customs and Border Protection (agency) to grant her an extension of temporary quarters subsistence expenses (TQSE) beyond the initial five days granted.

On April 9, 2014, the agency authorized Ms. Canaba a permanent change of station move from Montreal, Canada, to Santa Teresa, New Mexico, with an effective date of July 27, 2014. Ms. Canaba already owned a home in El Paso, Texas, approximately twelve miles from the new duty station, which she had rented while in Canada. Nearly seven months before her transfer, Ms. Canaba's home became vacant, and she decided to occupy it as her permanent residence upon her return. Ms. Canaba was advised that she could receive TQSE, and her orders authorized a fixed amount of TQSE for five days.

On June 9, 2014, Ms. Canaba requested an additional twenty-five days TQSE. Ms. Canaba stated that the increase in her TQSE allotment was necessary because her El Paso home did not have a functioning air conditioning system, "making the house completely uninhabitable given the extreme hot weather during the summer months." Ms. Canaba alleged that five days TQSE was insufficient time to complete the necessary repairs to the air conditioning system and make the home habitable. The agency denied her request on the ground that Ms. Canaba had failed to demonstrate a compelling reason that justified the requested extension. The agency explained that Ms. Canaba had sufficient time to direct the

property management service that was responsible for maintaining her home while she was in Canada to make repairs in her absence to ensure that the home was habitable upon her return to El Paso. The agency asserts that its denial was reasonable and not an abuse of discretion. On appeal, Ms. Canaba has offered no evidence that demonstrates the agency's decision was unreasonable or an abuse of discretion.

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 (2014). This benefit is granted at the discretion of the administering agency. 5 U.S.C. § 5724a(c)(1) (2012); *Pamela S. Boyd*, CBCA 2574-RELO, 12-1 BCA ¶ 35,052; *Kathleen C. Kelly*, CBCA 1228-RELO, 08-2 BCA ¶ 33,930; *Donald L. Schaffer*, CBCA 695-RELO, 07-2 BCA ¶ 33,607; 41 CFR 302-6.6. An agency has 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. *William F. Brooks, Jr.*, CBCA 2595-RELO, 12-2 BCA ¶ 35,064; *Beverly K. Joiner*, CBCA 1675-RELO, 09-2 BCA ¶ 34,273.

Here, the agency determined that Ms. Canaba's request for additional TQSE was based on her voluntary actions and not beyond her control. 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.

The claim is denied.

JEROME M. DRUMMOND
Board Judge