



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 12, 2015

CBCA 4395-RELO

In the Matter of STEPHEN J. COLLIER

Stephen J. Collier, Travis Air Force Base, CA, Claimant.

Lisa Armes, Chief, Staffing, Affirmative Employment, SEU & ART Officer Career Program Branch, Civilian Personnel Division, Department of the Air Force, Robins Air Force Base, GA, appearing for Department of the Air Force.

LESTER, Board Judge.

Claimant, Stephen J. Collier, challenges the Department of the Air Force's refusal to extend temporary quarters subsistence expenses (TQSE) beyond the initial twenty-one days that it had originally granted him.

Background

Mr. Collier received orders for a permanent change of station (PCS) from Schriever Air Force Base (AFB), Colorado, to Travis AFB, California, directing him to report for duty at Travis AFB on May 23, 2014. His orders authorized him to receive twenty-one days of TQSE on an actual expense basis.

As part of his work program, Mr. Collier was required to attend officer training school (OTS) at Maxwell AFB, Alabama, from July 1 through September 9, 2014.

On June 18, 2014, after he had started using his authorized TQSE following his report for duty at Travis AFB, Mr. Collier submitted a request for a fifteen-day extension of TQSE (which he has now reduced to eleven days), stating that, "[d]ue to a 1 July 2014 report date for [OTS], I am unable to secure a residence until return from TDY [temporary duty]." He

sought this extension to cover several additional days (beyond the original twenty-one days authorized) for temporary housing before his departure from Travis AFB to OTS, as well as several days in September 2014 following his return to Travis AFB from OTS. He attached to his extension request a copy of an agreement with an apartment complex indicating that he was to move into a specific apartment, with a tentative move-in date of September 25, 2014. Although Mr. Collier has explained to the Board that the apartment complex was under construction and expected to be unavailable until early fall, necessitating the late tentative move-in date, Mr. Collier's extension request did not contain that explanation.

On July 17, 2014, the Air Force denied his extension request. In its written denial, the Air Force informed Mr. Collier that it could only extend his TQSE if the need for an extension arose from "circumstances beyond [his] control" and for reasons "acceptable to the agency." It further stated that, although Mr. Collier had indicated his inability to secure a permanent residence, he had provided the Air Force with a copy of his actual agreement for an apartment, with a move-in date after his return from OTS. It found that it lacked any information to establish that the delayed move-in date was the result of circumstances beyond Mr. Collier's own control that were acceptable to the agency.

On September 30, 2014, Mr. Collier requested that the Air Force reconsider its decision, and, on December 19, 2014, he submitted this appeal to the Board. We closed the record on May 5, 2015, after Mr. Collier informed us that he was electing not to reply to the agency's submission.

Discussion

Mr. Collier has represented that, because he expected to be at Travis AFB for only a few weeks before departing for more than two months of OTS, it was not feasible for him to obtain permanent housing until he returned from OTS. In addition, he has stated that, because he and his wife had a newborn son, it was prudent for his family to stay in Colorado, where other family members were nearby, until after he had completed OTS and returned to Travis AFB on a permanent basis. For these reasons, he believes that the agency should have extended his TQSE to cover additional days prior to his departure for OTS and a short period of time following his return from OTS before his apartment became available.

TQSE "is intended to reimburse [a transferred employee] reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters." *Zenaida Canaba*, CBCA 3993-RELO, slip op. at 2 (Apr. 21, 2015) (quoting 41 CFR 302-6.3 (2014)). "This benefit is granted at the discretion of the administering agency." *Id.* (citing 5 U.S.C. § 5724a(c)(1) (2012)); see *Marvin R. McGee*, GSBICA 15829-RELO, 02-2 BCA ¶ 32,002, at 158,114 ("Whether to authorize TQSE to a relocating employee is a determination which

is wholly within the discretion of the agency involved.”). Similarly, once the agency has authorized TQSE, it retains broad discretion to decide whether “to grant extensions of TQSE,” and that exercise of discretion “will not be overturned unless that decision is found to have been arbitrary and capricious.” *Rajiv R. Singh*, GSBCA 16892-RELO, 06-2 BCA ¶ 33,418, at 165,672; *see McGee*, 02-2 BCA at 158,114.

The Federal Travel Regulation (FTR), “implementing the statute [that provides for TQSE], allows an agency to authorize as many as 120 [consecutive] days of eligibility for reimbursement of actually-incurred TQSE, with the last sixty contingent on a determination that a compelling reason for continued occupation of temporary quarters exists.” *Kevin D. Reynolds*, CBCA 2201-RELO, 11-1 BCA ¶ 34,756, at 171,061 (citing 5 U.S.C. § 5724a(c) (2006)); *see* 41 CFR 302-6.104 (2014) (agency may extend actual-expense TQSE beyond sixty days if it “determines that there is a compelling reason for [employee] to continue occupying temporary quarters”). The FTR defines the “compelling reasons” necessary to extend TQSE beyond the first sixty-consecutive-day period as “an event that is beyond your control and is acceptable to your agency.” 41 CFR 302-6.105.

The agency in this instance informed Mr. Collier that it could grant him an extension of his TQSE only if “there is a demonstrated need for additional time due to circumstances beyond the employee’s control and are acceptable to the agency.” That is, it represented that it needed a “compelling reason” to approve his TQSE extension request. Yet, Mr. Collier’s TQSE request did not take him beyond the maximum initial TQSE period of sixty consecutive days: he was originally authorized TQSE for only a period of twenty-one days, and he sought an extension of only fifteen (now reduced to eleven) days.¹ Neither the statute nor the FTR imposes a “compelling reason” requirement upon extension requests that do not

¹ At first blush, Mr. Collier’s request for extended TQSE for a few days in June followed by a few days in September would not seem to constitute “consecutive” days. “[S]tatute authorizes reimbursement of TQSE for ‘a period,’ not multiple periods.” *Joseph S. Mikac*, CBCA 822-RELO, 08-1 BCA ¶ 33,725, at 166,979 (2007). Nevertheless, the FTR provides that the sixty-consecutive-day initial TQSE period may be interrupted “[f]or circumstances attributable to official necessity such as an intervening temporary duty assignment or military duty.” 41 CFR 302-6.106(b); *see* Joint Travel Regulations (JTR) C5572-B.2.b (“the TQSE period continues to run whether or not the employee and/or dependents occupy temporary lodging except if occupancy is interrupted for . . . [n]ecessary official duties such as an intervening TDY assignment/military duty”). Because the requested TQSE extension period is interrupted by official orders for OTS, Mr. Collier’s request for a TQSE extension for days immediately preceding and following his OTS tour involve days that the FTR views as “consecutive.”

seek an extension beyond the initial TQSE period of sixty consecutive days. *See* 5 U.S.C. § 5724a(c) (2012); 41 CFR 302-6.104. Similarly, the JTR applicable at the time of Mr. Collier’s extension request, to which the Air Force cites, imposes a “compelling reason” requirement only upon TQSE extension requests for the “Additional TQSE(AE) Period,” which the JTR defines as an “additional 60 consecutive days” beyond the initial sixty consecutive days. JTR C5570-B. Because his eleven-day extension request, if granted, would not extend his total initial TQSE period beyond sixty days, the agency did not have to find “compelling reasons” to grant his extension request.²

Nevertheless, it is clear that the agency exercised the broad discretion accorded to it in denying the TQSE extension request. TQSE is intended for use “when it is necessary” for the employee “to occupy temporary quarters.” 41 CFR 302-6.3 (emphasis added). When Mr. Collier informed the Air Force in June 2014 that his impending OTS tour precluded him from finding permanent housing, he had already entered into an agreement for an apartment rental with a tentative move-in date of September 25, 2014. He provided no explanation as to why the rental could not begin at an earlier date. In denying his extension request, the agency relied upon the fact that Mr. Collier had found permanent housing, without any explanation for the late move-in date. *See Singh*, 06-2 BCA at 165,672 (“TQSE lasts only until the permanent residence is reasonably available”). Given the agency’s discretionary authority in deciding whether to provide TQSE, we cannot find that the Air Force abused its discretion here in deciding not to provide an extension.

Decision

For the foregoing reasons, we deny Mr. Collier’s request for a TQSE extension.

HAROLD D. LESTER, JR.
Board Judge

² In denying Mr. Collier’s TQSE extension request, the agency mentioned that there was “Air Force policy guidance” that imposed the “compelling reasons” standard on his TQSE extension request. The Air Force has not cited to, quoted from, or provided us with copies of any such policy guidance. Accordingly, we have no basis for relying upon it.