



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 2, 2018

CBCA 5979-RELO

In the Matter of RAYMUNDO R. LOMBOY

Raymundo R. Lomboy, Stuttgart, Germany, Claimant.

Clint E. Lock, Civilian Personnel Officer, United States Air Force, APO Area Europe, appearing for Department of the Air Force.

DRUMMOND, Board Judge.

Claimant, Raymundo R. Lomboy, a civilian employee of the Department of the Air Force (Air Force), changed permanent duty stations. The agency authorized reimbursement of temporary quarters subsistence allowance (TQSA) for up to ninety days, but denied a request by claimant to extend the TQSA. Claimant disputes the agency's refusal to grant him an extension for TQSA beyond the initial period granted. We sustain the agency's decision and deny the claim.

The Air Force issued orders transferring claimant from Colorado Springs, Colorado, to Stuttgart, Germany. The orders authorized payment of TQSA for as many as ninety days, with that expiring on November 17, 2017. Shortly before the expiration of the initial ninety-day TQSA period, claimant requested an extension for an unspecified number of days. As justification, claimant asserted that there was a housing shortage in Stuttgart and that he was unable to locate permanent housing suitable for his family needs because of location, size, rental price, and/or property conditions until October 17, 2017, and that a house would not be available until December 18, 2017. Claimant did not discuss further the locations, sizes, prices, and/or property conditions he considered to be unacceptable, nor the houses that were unavailable. He attached to his request listings for rental properties that he had been

provided as potentially available. With a few exceptions, the listings were written entirely in German with no translation. Claimant did not annotate or otherwise note on the listings the locations, sizes, prices, and/or conditions that made these properties either unacceptable or unavailable, nor did he discuss why the property he rented in October was acceptable.

The Air Force considered that claimant's need for an extension of TQSA was attributable to his voluntary actions and not to circumstances beyond his control. The agency disagreed with his assertion that there was a housing shortage in Stuttgart, noting that his own documentation of rental property listings did not reflect such a shortage. In addition, another employee located suitable housing in the same area during this period without difficulty. The agency further pointed out that claimant chose not to pursue certain housing options and was unsuccessful in pursuing others. Consequently, the Air Force did not find compelling circumstances beyond the control of the employee that would justify an extension of TQSA. Moreover, the agency advised that the "Living Quarters Allowance (LQA) in the amount of the rent for the temporary quarters occupied started on the day following the end of TQSA." Thus, claimant's hotel bill was fully covered by LQA, and the financial impact on his relocation benefits was limited to a reduction in per diem and incidental expenses after he became ineligible for TQSA.

By statute, TQSA is intended to pay for reasonable subsistence expenses of an employee and immediate family members while occupying temporary quarters while relocating to or from an overseas location." 5 U.S.C. § 5923(a)(1)(B) (2012); *Nhia Xiong*, CBCA 5464-RELO, 17-1 BCA ¶ 36,644, at 178,462. Regulations implementing "statutes providing for overseas pay differential and allowances, including TQSA" are found in the Department of State Standardized Regulations (DSSR). The Department of Defense Joint Travel Regulations (JTR) expressly provide that the TQSA rules established in the DSSR apply to Department of Defense employees. JTR 1255; *see generally William P. McBee, Jr.*, CBCA 943-RELO, 08-1 BCA ¶ 33,760. An extension of the TQSA period beyond the initial ninety days is not automatic. An agency may extend the period for TQSA for up to an additional sixty days if the agency head or his or her designee determines there are compelling reasons (due to circumstances beyond the employee's control) for continued occupancy of temporary lodging. 5 U.S.C. § 5923 (b); DSSR 122.2. An agency has broad discretion to determine whether compelling circumstances exist beyond the employee's control to justify the grant of additional TQSA. We do not overturn an agency's determination unless it is arbitrary, capricious, or contrary to law.¹ *See generally Donald E.*

¹ As appropriate, the Board looks at principles governing temporary quarters subsistence expense (TQSE) allowances to determine the appropriateness of reimbursement for TQSA expenses. *Sean P. Tweed-Kent*, CBCA 5528-RELO, 17-1 BCA ¶ 36,797;

Coney, CBCA 702-RELO, 07-2 BCA ¶ 33,605; *Charles A. Houser*, CBCA 2140-RELO, 11-1 BCA ¶ 34,769. Accordingly, our inquiry is limited to whether the agency reasonably exercised its discretion.

The agency considered the housing conditions at the new duty station and other factors concerning claimant's delay in obtaining a permanent residence. The claimant has identified no flaw in the agency's analysis, although the claimant seeks a different conclusion. We find that the agency has reasonably exercised its discretion in denying the extension.

Decision

For the reasons stated, we affirm the agency's decision and deny the claim.

Jerome M. Drummond

JEROME M. DRUMMOND

Board Judge

Nicholas J. Thacker, CBCA 4981-RELO, 16-1 BCA ¶ 36,231, at 176,766. "The TQSE allowance is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary [for the employee] to occupy temporary quarters," and applies when the employee's "new official station is located in the United States." 41 CFR 302-6.3 to -6.4 (2016). Voluntary actions may not be used to support an extension request for TQSE. *Beverly K. Joiner*, CBCA 1675-RELO, 09-2 BCA ¶ 34,273. Likewise, unjustified personal preferences may not be used to support an extension request for TQSE. *Shawn B. Anderson*, CBCA 3078-RELO, 13 BCA ¶ 35,282.