



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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February 2, 2024

CBCA 7921-DBT

In the Matter of TIMOTHY B.

Timothy B., Petitioner.

Aaron J. Pound, Office of General Counsel, General Services Administration, Washington, DC, appearing for General Services Administration.

**BEARDSLEY**, Board Judge (Chair).

On September 20, 2023, the General Services Administration (GSA) notified petitioner that he should not have been authorized temporary quarters subsistence expenses (TQSE) for his spouse and dependent children. As a result, GSA claimed that petitioner owes a debt in the amount of \$9300 for the advance of funds he received for TQSE.

This decision is issued in a pre-offset paper hearing pursuant to 41 CFR 105-56.009 (2022), based on the timely submissions of the parties. The hearing official finds that petitioner was entitled to TQSE for his wife and children, and GSA has failed to prove that petitioner owes a debt.

Background

Petitioner has been employed by GSA since January 2000. In November 2019, petitioner moved to Stuttgart, Germany, with his family under an overseas permanent change of station (PCS) order from GSA and the United States European Command for a period of three years through November 2022. Petitioner accepted a six-month extension of his position in Germany and returned to the continental United States (CONUS) in May 2023. His family, however, chose to return to CONUS in December 2022, after completing petitioner's three-year term outside of the continental United States (OCONUS). Petitioner

indicated that his wife and children decided to return to Florida in December 2022 for personal reasons, including that his wife and he had decided to separate with the intention to file for divorce in the state of Florida.

Petitioner's Official TDY [temporary duty] Travel Authorization (Form 87) was signed by the GSA Federal Acquisition Service (FAS) Commissioner on November 7, 2022. The travel authorization stated, "Final return travel from the post of duty in Stuttgart, Germany to the home of record (Wesley Chapel, FL)<sup>1</sup> for the employee's spouse . . . and 2 dependants per [Federal Travel Regulation (FTR)] 302-3.227 [(41 CFR 302-3.227 (2022))]. . . . Employee will provide a new service agreement date when it has been determined when he will be returned to CONUS or remain OCONUS." The Supplement to Official Travel Authorization (Form 87A) authorized pre-departure temporary quarters for six days and TQSE for the three members of petitioner's immediate family with a beginning date of November 17, 2022, and an ending date of January 11, 2023.<sup>2</sup> Petitioner was advanced \$9300 (approximately eighty percent of the first thirty days of TQSE) on November 22, 2022.

In October 2022, petitioner signed two overseas transportation agreements, GSA Forms 5042 and 5043, stating that he agreed to repayment of travel and transportation expenses for him and his immediate family if he failed to complete his twelve months of service following his overseas posting. On December 9, 2022, petitioner signed a twelve-month service agreement to return to CONUS, listing May 25, 2023, as the effective date of transfer.<sup>3</sup> The contracting officer's representative for GSA noted an "[a]ttached signed GSA 2255 – TQSE authorization for [petitioner] and his dependents. We will disregard prior traffic since [petitioner] and dependents are covered for TQSE, per your most recent guidance."

Petitioner ended his house lease in Germany to move to a smaller apartment for the duration of his overseas term. As a result, petitioner, his wife, and their two children spent six days (December 1 to 7, 2022) in a hotel prior to petitioner's wife and children departing for CONUS on December 7, 2022. However, because petitioner moved into pre-departure temporary quarters before he signed his service agreement, GSA determined that he was not eligible for the six days of pre-departure temporary quarters allowance.

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<sup>1</sup> Wesley Chapel is twenty-five miles northeast of Tampa.

<sup>2</sup> The travel authorization mistakenly had the ending date as January 11, 2020.

<sup>3</sup> GSA failed to provide Form 2255 (the service agreement) to petitioner to complete before his family departed OCONUS on December 7, 2022.

Starting on December 7, 2022, petitioner's spouse and children occupied temporary quarters in the Orlando area, instead of the Tampa area, because Orlando offered more temporary quarters and was less expensive. GSA's FAS Commissioner approved petitioner's request to allow his wife and children to occupy temporary quarters in the Orlando area, even though Orlando is over fifty miles from Tampa, determining that it was in the best interest of the Government and did not present any additional cost to GSA.

On February 7, 2023, the Director of the Assisted Acquisition Services Division of GSA, Region 3, approved the extension of TQSE for an additional thirty days. Petitioner co-signed an apartment lease for his family in Tampa, ending TQSE on February 21, 2023.<sup>4</sup> In February 2023, petitioner asked his GSA supervisor if he could relocate to South Carolina (instead of Tampa) so that he could care for his recently widowed mother.

In April, GSA amended petitioner's travel authorization to include his request for thirty additional days of temporary quarters for his family and to reflect his new duty station in South Carolina.<sup>5</sup> On May 12, 2023, GSA notified petitioner:

I have attached your amended travel authorization. Our office has received a determination from the Office of General Counsel after their review of your travel authorization. It was determined that your spouse and dependents are not authorized temporary quarters subsistence expenses. Therefore, we have amended your travel authorization and removed all temporary quarters for your spouse and dependents. Your flight costs have been adjusted to reflect the actual cost of your family's travel and your estimated cost of travel. Your Pre-departure temporary quarters estimate has been added. We have increased your miscellaneous expenses from \$650 to \$1300 and your local transportation from \$200 to \$400 to allow for your transportation.

Your travel advance of \$9300.00 will be offset by your relocation travel vouchers. Any remaining balance will need to be repaid to GSA. The amended travel authorization has not been signed by the authorizing official to date.

Petitioner was served with divorce papers on May 26, 2023, which was after his return to his CONUS duty station.

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<sup>4</sup> While referenced, a copy of the lease was not provided to the Board.

<sup>5</sup> This amended travel authorization was not provided to the Board, but both petitioner and GSA indicated that it had never been signed.

Petitioner was asked to repay the \$9300 advance payment for TQSE to GSA. GSA determined that TQSE should not have been authorized for petitioner's spouse and children because "there was no demonstrated intent to maintain the same household at the time of [his] transfer."

### Discussion

GSA contends that petitioner owes a debt in the amount of \$9300 for funds wrongly advanced to petitioner for TQSE for petitioner's spouse and dependent children.

The Board has consistently held that reimbursement of TQSE rests squarely within the discretion of the agency. *See Ruben M.*, CBCA 7161-RELO, 21-1 BCA ¶ 37,971; *Christopher S.*, CBCA 6756-RELO, 21-1 BCA ¶ 37,778; *Scott T. Downey*, CBCA 6777-RELO, 20-1 BCA ¶ 37,621; *Michael P. Voich*, CBCA 6635-RELO, 20-1 BCA ¶ 37,595. The Board will not overturn an agency decision unless it is arbitrary, capricious, or contrary to law. *Christopher S.* (citing *Donald E. Coney*, CBCA 702-RELO, 07-2 BCA ¶ 33,605).

*David H.*, CBCA 7312-RELO, 22-1 BCA ¶ 38,129, at 185,224. GSA's decision to authorize and pay TQSE for petitioner's wife and children was not arbitrary, capricious, or contrary to law.

"As a general rule, once travel is authorized, the employee's right to reimbursement of travel costs vests as the travel is performed, and 'valid travel orders cannot be revoked or modified retroactively, after the travel is completed, to decrease rights that have already become fixed.'" *Shamika S. Rice*, CBCA 6028-TRAV, 18-1 BCA ¶ 37,150, at 180,853 (quoting *Douglas W. Morris*, CBCA 5574-TRAV, 17-1 BCA ¶ 36,664, at 178,542 (quoting *Renee Cobb*, CBCA 5020-TRAV, 16-1 BCA ¶ 36,240, at 176,819)).

*Aaron C. Rutland*, CBCA 6572-RELO, 20-1 BCA ¶ 37,516, at 182,223. "Only if 'there was [a material] error on the face of the orders or the orders were clearly in conflict with a law, regulation, or agency instruction' would the employee's rights not vest when the traveler incurred costs in reliance upon the orders." *Ruben M.*, CBCA 7161, 21-1 BCA ¶ 37,971, at 184,414 n.1 (quoting *Shamika*, 18-1 BCA at 180,853). Here, there was no material error on the face of the orders, and the orders were not in conflict with a law, regulation, or agency instruction.

GSA asserts that TQSE should not have been authorized for petitioner's spouse and dependent children because the temporary quarters occupied in Orlando were not reasonably related to petitioner's transfer to his new duty station in Tampa. The applicable FTR states:

Where may I/we occupy temporary quarters at Government expense?

You and/or your immediate family may occupy temporary quarters at Government expense within reasonable proximity of your old and/or new official stations. Neither you nor your immediate family may be reimbursed for occupying temporary quarters at any other location, unless justified by special circumstances that are reasonably related to your transfer.

41 CFR 302-6.9 (FTR 302-6.9). The FTR also permits the employee and his immediate family to occupy temporary quarters at different locations. FTR 302-6.10. The Orlando metropolitan area, however, is in reasonable proximity to petitioner's Tampa duty station. With petitioner in Germany and not coming to CONUS for six months, occupying temporary quarters in Orlando was justified. Moreover, the GSA FAS Commissioner agreed that it was in the Government's interest to approve TQSE for temporary quarters in Orlando.

The FTR defines "immediate family" as an employee's spouse and children who are members of the employee's household at the time "he/she reports for duty at the new permanent duty station or performs other authorized travel involving family members." FTR 300-3.1. GSA argues that there was "no demonstrated intent to maintain the same household at the time of [petitioner's] transfer," and, therefore, TQSE should not have been authorized. Our analysis centers on petitioner's intent when his wife and children moved back to Florida. *Daniel E. Moritz*, CBCA 5374-RELO, 17-1 BCA ¶ 36,889, at 179,782 (citing *James Bruneste*, CBCA 3896-RELO, et al., 14-1 BCA ¶ 35,774, at 175,007 ("[The] determination should revolve around the employee's intention at the time the employee or [his family] occupies the quarters.")); see also *Brian R. Weeks*, CBCA 2320-RELO, 11-2 BCA ¶ 34,795; *Stephen A. Monks*, GSBCA 15029-RELO, 00-1 BCA ¶ 30,650 (1999). "[T]he concept of 'the household' is not to be strictly construed in literal terms. Persons may be members of the same household even though they are not living under the same roof." *Robert L. Rogers*, B-209002 (Mar. 1, 1983) (citing *Ernest P. Gianotti*, 59 Comp. Gen. 450 (1980)).

Petitioner argues that he, his spouse, and dependent children constituted a household despite being physically separated and expressing an intent to dissolve their marriage because, at the time of the transfer of his spouse and children, petitioner and his wife were not legally separated. He also points to the fact that he and his wife co-signed a lease in February 2023 in Tampa. "[A] prerequisite to a determination that the spouse was not a member of the employee's household" requires "a legal separation prior to transfer or a

demonstrated intent by the spouse to purchase a separate residence.” *Vanessa G. Outenreath*, GSBCA 16316-RELO, 04-2 BCA ¶ 32,681, at 161,733 (citing *Marilyn Daterman*, GSBCA 13686-RELO, 97-1 BCA ¶ 28,880); see *Dannette Wood*, CBCA 1393-RELO, 09-2 BCA ¶ 34,217, at 169,138 (“It is well-settled that if an employee and spouse are legally separated, the spouse is not a member of the employee’s immediate family, and therefore, such a spouse does not fall within the FTR’s definition of immediate family.”). Despite living apart and ultimately filing for divorce, petitioner and his spouse were not legally separated and did not demonstrate an intent to purchase separate residences at the time of the wife and children’s transfer to CONUS. Therefore, petitioner’s wife and dependent children were considered members of the employee’s household and immediate family for purposes of TQSE.

GSA argues that there is “no demonstrable connection” between the temporary quarters occupied by petitioner’s spouse and dependent children and Tampa. GSA asserts that “[t]his is especially true given that the family did not know the location of [petitioner’s] new duty station before departing Germany on December 7, 2022, and the reason provided to the agency for the family’s occupancy of temporary quarters away from the employee’s old duty station (same as new duty station) was a matter of preference.” However, the family did believe in December 2022 that the new duty station would be Tampa, and petitioner and his wife ultimately co-signed a lease in Tampa.

Under what circumstances will I receive a TQSE allowance?

You will receive a TQSE allowance if: (a) Your agency authorizes it before you occupy the temporary quarters (the agency authorization must specify the period of time allowed for you to occupy temporary quarters); (b) You have signed a service agreement; and (c) You meet any additional conditions your agency has established.

FTR 302-6.7.

GSA relies on the fact that petitioner did not sign his new service agreement until after his spouse and dependent children departed for CONUS. However, there is ample evidence in the record that petitioner intended to sign a twelve-month service agreement and return to Tampa before his spouse and dependent children occupied temporary quarters and that the late signing of the agreement on December 9, 2022, was only an administrative error. Petitioner signed two transportation agreements in October 2022 in which he agreed to repay the Government his transportation and relocation costs if he did not complete his new twelve-

month tour of duty on return to CONUS, and his initial orders and email traffic from November 2022 recognized the intention to relocate to Tampa.<sup>6</sup>

Petitioner was entitled to TQSE for his wife and dependent children, and GSA has failed to establish that petitioner must repay \$9300.

### Decision

GSA has failed to establish the existence of the debt. The hearing official, therefore, grants the petition.

*Erica S. Beardsley*

ERICA S. BEARDSLEY

Board Judge

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<sup>6</sup> Petitioner asked the Board to also “reverse GSA’s decision to deny pre-departure temporary quarters and Per Diem of his family in preparation for their return CONUS.” It is not clear to the Board if this issue is part of this petition. If so, the hearing official finds that petitioner was entitled to reimbursement for the cost of the authorized pre-departure temporary quarters he and his family occupied in December 2022.