



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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November 21, 2024

CBCA 8161-RELO

In the Matter of DARREN E.

Darren E., Claimant.

Crystal E. Forsyth, Senior Human Resources Specialist, Defense Finance Accounting Service, Department of the Army, Rome, NY, appearing for Department of Defense.

**GOODMAN**, Board Judge.

Claimant is a civilian employee of the Department of Defense. He has asked this Board to review the agency's denial of costs incurred in his permanent change of station (PCS) move to a foreign permanent duty station (PDS).

Background

Claimant's Travel Orders, Relocation, and Temporary and Permanent Housing

In 2022, claimant and his family relocated to Australia. His travel orders authorized shipment of household goods (HHG), with unaccompanied baggage (UB) included in the HHG weight limit, and a temporary quarters subsistence allowance (TQSA) "for a period not to exceed ninety days after first arrival at [the new PDS] or a period ending with the occupation of residence (permanent) quarters, if earlier." Claimant was also authorized to receive a living quarters allowance (LQA). Claimant's HHG and UB were shipped from his old PDS on February 22, 2022.

On March 15, 2022, claimant and his family arrived at the new PDS and moved into a hotel as temporary quarters, and TQSA payments commenced. Claimant states that United States federal employees who are relocated to Australia are disadvantaged with uncertain,

delayed HHG and UB deliveries and embassy-mandated safety inspections.<sup>1</sup> Claimant submitted a September 20, 2022, memorandum from Lieutenant Colonel Brian S. Barba, commander of the 337th Support Wing, United States Air Force (Barba Memorandum), which states that “[d]ue to the geographic location of Australia, it takes an extraordinary amount of time for members’ [HHG and UB] to arrive to Australia and pass customs inspections.” Claimant also submitted a January 17, 2023, memorandum from his unit commander, Colonel Michael A. Baker, to the Defense Finance Accounting Service (DFAS) (First Baker Memorandum), which states that “HHG shipments to Australia suffer from exceptionally long shipping and customs delays resulting in unusually long and unpredictable delivery timelines.”

Claimant states that the limited rental market at his new duty station resulted in an auction-type situation that compelled renters to negotiate and sign leases during onetime group showings, normally at higher than the asking price, in order to assure housing. Claimant submitted a second memorandum from Colonel Baker to DFAS (Second Baker Memorandum), also dated January 17, 2023, in which Colonel Baker confirmed the “tight housing market” in claimant’s new duty station area. To assure that he could acquire permanent quarters for himself and his family before the TQSA period expired, claimant negotiated and executed a lease that commenced on May 10, 2022, the fifty-sixth day of his authorized TQSA period, not knowing when his HHG and UB would arrive.

Claimant states that, while he awaited the arrival of his HHG and UB, he was advised on multiple occasions by the personnel office in the United States Embassy that he would be reimbursed for TQSA while his HHG and UB were in transit until arrival because he would not be able to furnish or live in his rented apartment without his HHG. He states:

I was informed this fell under DOD [Federal Management Regulation (FMR)] VOL 8 CH 3, para 4.2.1.2.2, “Extension. The 90 . . . day TQSA period may be extended up to 60 additional days if it is determined by the head of the agency that compelling reasons beyond the control of the employee require continued occupancy of temporary quarters” by the local support group.

Claimant, therefore, expected that he would receive TQSA through the initial ninety-day period until his HHG and UB arrived and that, if his HHG did not arrive before the end of this period, the TQSA period would be extended for a maximum of an additional sixty days.

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<sup>1</sup> Claimant’s statements are from his initial claim before the Board unless otherwise noted.

Claimant's HHG and UB did not arrive when the lease commenced on May 10, 2022, the fifty-sixth day of his TQSA period. Claimant and his family, thus, had no furnishings and were not able to occupy the rented permanent quarters. In his October 6, 2024, response to the Board's September 17, 2024, inquiry, claimant states: "[If] we had left our temporary quarters, which [we] were clearly instructed was not necessary, we would have had to sleep on the floor and live out the allotment of four suitcases and four carry-on bags for over a month until our HHG and UB arrived." Claimant and his family remained in temporary quarters until his HHG and UB arrived on June 24, 2022, which was 101 days after the commencement of the TQSA period and eleven days after the expiration of the initial authorized ninety-day TQSA period.

Claimant's obligation to pay rent began concurrent with the commencement of the lease. Had claimant received his HHG and UB, he would have been able to occupy the permanent quarters, and he would no longer be entitled to TQSA. However, claimant was now faced with paying rent for the leased quarters, for which LQA payments are to compensate, while continuing to incur expenses to remain in temporary quarters. Claimant began receiving LQA payments when the lease commenced.

#### Claimant's Request for Continued TQSA

Claimant and the agency offer different versions as to the scope of claimant's request for continued TQSA after the lease commenced. Claimant asserts that he requested an extension of TQSA from May 10, 2022, the date that his lease commenced, through June 24, 2022, when his HHG and UB arrived, but the extension was denied despite what he regards as compelling reasons beyond his control. To support his assertions, claimant refers to three memoranda supporting his version: the Barba Memorandum, the First Baker Memorandum, and the Second Baker Memorandum.

The Barba Memorandum concluded: "Based on the FMR VOL 8 above, I have recommended [claimant] request a TQSA extension from his head of agency to be reimbursed for his additional TQSA up to his HHG delivery date . . . . HHG transit time was out of the control of [claimant]."

The First Baker Memorandum, which was titled "Request given exceptional circumstances for exception to allow reimbursement of TQSA and LQA overlap expenses for [claimant]," stated: "Based on [claimant]'s circumstances, I am requesting an exception to permit reimbursement of his overlapping TQSA and LQA allowances for the period 12 MAY 22 to 24 JUN 22 or 44 days."

The Second Baker Memorandum, titled "Authorization to exceed 90[-]day TQSA limit for [claimant]," concluded: "In accordance with FMR VOL 8 . . . I authorize [claimant]

to be reimbursed for 101 days of TQSA. [Claimant] requires TQSA for this period due to exceptional UB/HHG transit time and housing market conditions in [his new PDS] which are beyond his control.”

Claimant states that, after these three memoranda were submitted, the claim for an extension was rejected. In his October 6, 2024, response to the Board’s inquiry, he further states that “[a]fter the initial claim was rejected, my supervisor . . . suggested we apply [for] the 3[-]day overlap [from] 5/10/22-5/12/22 since she could immediately sign off on this overlap.” He continues that “[t]o the best of my knowledge and after multiple inquiries from my immediate supervisor it was determined that Col. Baker could authorize the extension/overlap.”

In its August 28, 2024, response to claimant’s initial submission to this Board, the agency states that claimant did not request an extension of TQSA but asked for “an extension of LQA/TQSA overlap,” making a distinction between the concepts of extension of TQSA and overlapping of LQA and TQSA. The agency explained the overlap as the concurrent payment of LQA and TQSA:

The claimant requested an extension of LQA/TQSA overlap . . . . He received 3 days of incoming LQA/TQSA overlap with the proper authorization in accordance with [Department of State Standardized Regulations (DSSR)] 123.2c . . . . An extension past the 3[-]day maximum of LQA/TQSA overlap does not exist within regulation and therefore additional payment could not be granted.

Referencing the Second Baker Memorandum authorizing 101 days of TQSA, the Board directed the agency, on September 17, 2024, to respond to the following inquiry:

Does Col. Baker have the authority to grant claimant’s claim? If so, please state if this matter remains in dispute?

The agency responded on September 26, 2024:

Col. Baker may authorize the extension [of TQSA] I[n] A[ccordance] W[ith] the regulation he cited, however the employee was requesting an overlap, not an extension. The employee used the maximum 3 days overlap, and an exception and waiver does not exist in regulation to allow more than 3 days of an overlap.

In its September 26, 2024, response, the agency also repeated its assertion that the claimant only requested reimbursement for the TQSA/LQA overlap:

It was requested that a TQSA and LQA overlap for the period 5/12/22-6/24/22 (44 days) be processed. Please note that this request is **\*not\*** a request for extension [of TQSA]. The words extension and overlap have been used interchangeably throughout this process, but those are two different terms with different definitions. The employee wanted TQSA payment and LQA payment at the same time. This is what's known as overlap. Since he started a lease and remained in temporary quarters and [wishes] for payment of both this is a request for an overlap of the two allowances, not an extension.

While the agency indicated that Colonel Baker had the authority to grant an extension of TQSA, it did not respond to the Board's order to "state if this matter remains in dispute" given Colonel Baker's authority to grant the extension. Thus, the agency's position here is that claimant did not request an extension of TQSA but only requested an overlap of TQSA and LQA, which was limited by regulation to three days. The agency asserts that entitlement to TQSA terminated when the lease commenced and, by regulation, could only overlap LQA for an additional three days. The agency granted him three days of TQSA/LQA overlap, and, claimant, thus, received TQSA for 59 days (from March 15 through May 12, 2022). Therefore, the issue to be resolved is whether claimant is entitled to be reimbursed additional TQSA after his LQA commenced, through the day his HHG arrived, June 24, 2022.

#### DSSR Temporary Quarters Subsistence Allowance Provisions

The following provisions of the DSSR are relevant to the issue to be resolved.<sup>2</sup>

120 Temporary Quarters Subsistence Allowance

121 Definition

"Temporary quarters subsistence allowance" means an allowance granted to an employee for the reasonable cost of temporary quarters, meals and laundry expenses incurred by the employee and/or family members:

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<sup>2</sup> The Overseas Differentials and Allowances Act, 5 U.S.C. §§ 5921–5928 (2018), authorizes agencies to reimburse employees who are stationed abroad for housing expenses when they are not provided government quarters without charge. *Id.* § 5923. The statute is implemented to apply to civilian employees through section 120 of DSSR. *See William P. McBee, Jr.*, CBCA 943-RELO, 08-1 BCA ¶ 33,760, at 167,115-16; *David C. Scheivert*, CBCA 6657-RELO 20-1 BCA ¶ 37,577, at 182,459.

- a. for a period not to exceed 90 days after first arrival at a new post in a foreign area or a period ending with the *occupation* of residence (permanent) quarters, if earlier

....

### 122.1 Purpose

The temporary quarters subsistence allowance is intended to assist in covering the average cost of adequate but not elaborate or unnecessarily expensive accommodations in a hotel, pension, or other transient-type quarters at the post of assignment, plus reasonable meal and laundry expenses for a period not in excess of 90 days after first arrival at a new post of assignment in a foreign area, ending with the *occupation* of residence quarters if earlier . . . .

### 122.2 Extension

The 90 . . . day temporary quarters subsistence periods may be extended up to but not more than an additional 60 days in each case if it is determined by the head of agency that *compelling reasons beyond the control of the employee require continued occupancy of temporary quarters*.

....

### 123.1 Commencement

The temporary quarters subsistence allowance grant to an employee upon first arrival at a new post, including an employee or family member occupying temporary quarters at no expense, (e.g. government-owned or leased housing), shall commence as of the applicable date shown below, or the date expenses for temporary lodging are incurred, if later:

- a. the date the employee arrives at a new post . . . .

....

### 123.2 Termination

The temporary quarters subsistence allowance granted upon first arrival at a new post shall terminate as of the earliest of the following dates:

- a. on the 91st day following first arrival of the employee or family member, if earlier, unless an extension is authorized under Section 122.2 by the head of agency;
- b. the date temporary quarters are no longer *occupied*;
- c. the date of *occupancy* of residence (permanent) quarters (exception: the head of agency or designee may determine that up to three days are required for payment of both the temporary quarters subsistence allowance and the living quarters allowance because the employee needs this overlap to *move newly-arrived household goods into permanent quarters in good order*); (eff. 7/10/2016 TL:SR-894) . . . .

DSSR 120–123.2 (emphasis added).

#### DSSR Living Quarters Allowance Provisions

DSSR 131.1 defines LQA as “a quarters allowance granted to an employee for the annual cost of suitable, adequate, living quarters for the employee and his/her family.” DSSR 131.2 further defines “[r]ent” as “exclusive of heat, light, fuel (including gas and electricity), water and taxes, means the annual cost of suitable, adequate living quarters for an employee and their family.”<sup>3</sup> Claimant’s entitlement to LQA is not in dispute. The issue to be resolved is the amount of time claimant may be compensated for TQSA after his LQA commences, based upon his circumstances.

The circumstances applicable to the commencement of LQA for transferred employees are stated in DSSR 132.11:

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<sup>3</sup> LQA is not a travel, transportation, or relocation expense that falls within the authority that the Administrator has delegated to this Board but, instead, is a “species of federal employee compensation.” *Willie J. Chandler*, CBCA 5286-RELO, 16-1 BCA ¶ 36,348, at 177,209; *see Jermaine W. DeWitt*, CBCA 5399-RELO, 16-1 BCA ¶ 36,537, at 177,995. Pursuant to 31 U.S.C. § 3702(a)(2), which grants to the Office of Personnel Management (OPM) the authority to settle claims involving federal civilian employees’ compensation and leave, LQA claims fall within OPM’s review and settlement authority. *Chandler*, 16-1 BCA at 177,209; *see also Rebecca J. Lott*, CBCA 6356-RELO, 19-1 BCA ¶ 37,286, at 181,408.

An LQA grant to a newly appointed or transferred employee shall commence at his/her post as of one of the following dates, whichever is latest:

....

d. the date following termination of a temporary quarters subsistence allowance (see exception at DSSR 123.2c) (eff. 7/10/2016 TL:SR-894); or

e. the date expenses for quarters are *incurred*.

DSSR 132.11 (emphasis added).

### Discussion

Claimant seeks to extend his entitlement to TQSA period until the date his HHG and UB were delivered because he was unable to occupy the rented premises until then. He asserts that his inability to occupy the premises and continued need for temporary quarters constitute compelling reasons beyond his control, justifying an extension pursuant to DSSR 122.2. Claimant exercised diligence in a difficult housing market to assure that he would have permanent quarters within his initial ninety-day TQSA period. Because claimant's HHG and UB were not delivered until June 24, 2022, claimant and his family remained in their hotel and could not occupy his permanent quarters until then. This resulted in a forty-five-day overlap between the hotel stay and the lease period

Because claimant's LQA payments began when the lease commenced, the agency asserts that – even though claimant remained in temporary quarters until its HHG and UB arrived – TQSA must terminate pursuant to DSSR 123.2c when the lease commenced because this regulation limits the overlap of LQA and TQSA to three days. The agency interprets DSSR 123.2c as barring a consideration of extending claimant's TQSA, even though claimant's HHG and UB remained delayed in transit and the delivery date could not be determined. Additionally, the agency asserts that there was not a claim for an extension of TQSA but only one for the TQSA and LQA overlap, despite the memoranda from claimant's unit commander authorizing an extension for compelling reasons, whom the agency has acknowledged has the authority to do so.

The definition of TQSA in DSSR 121 states that TQSA ends with the “*occupation of residence (permanent) quarters.*” DSSR 122.1 reiterates that the purpose of TQSA is to cover “a period not to exceed 90 days after first arrival at a new post in a foreign area or a period ending with the *occupation of residence (permanent) quarters, if earlier.*” Extension of TQSA pursuant to DSSR 122.2 is justified by “compelling reasons beyond the control of the



employee require continued *occupancy* of temporary quarters.” Termination of TQSA occurs pursuant to DSSR 123.2 at the earliest of the expiration of the TQSA period, the date temporary quarters are no longer *occupied* or the date of *occupancy* of permanent quarters. However, TQSA can be extended pursuant to DSSR 123.2c for three days and overlap payment of LQA can be made because the employee needs this overlap to move newly-arrived household goods into permanent quarters in good order, i.e., when the employee is able to *occupy* permanent quarters.

Pursuant to DSSR 132.11, the payment of LQA commences on the latest of: (1) the date TQSA terminates (unless the three-day overlap is allowed pursuant to DSSR 123.2c); or (2) the date expenses for quarters are incurred (i.e., the day a lease commences). However, this regulation requires that the employee possess their HHG and be able to occupy permanent quarters when TQSA terminates or at the most three days after permanent quarters can be occupied, as the three-day period is to allow sufficient time to move newly arrived HHG into the premises.

The regulations do not address claimant’s circumstances here – how an employee should be compensated for TQSA in addition to LQA when a lease commences, expenses for permanent quarters begin to accrue, and the employee is unable to occupy the permanent quarters for lack of HHG and must, therefore, remain in temporary quarters and continue to incur expenses.

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. *David C. Scheivert*, CBCA 6657-RELO, 20-1 BCA ¶ 37,577, at 182,460. However, the exception for a three-day overlap of TQSA and LQA in DSSR 123.2c, upon which the agency relied, applies to situations when the HHG has arrived to allow the employee time to occupy the permanent quarters. As claimant did not have his HHG and could not occupy his permanent quarters, this exception is not applicable here.

The regulation applicable to claimant’s circumstance is DSSR 122.2, which allows for an extension of the TQSA period for compelling reasons beyond the control of the employee that require continued occupancy of temporary quarters. While compelling reasons are not defined in the DSSR, the Board will, as appropriate, look to principles governing temporary quarters subsistence expense (TQSE) allowances, a similar entitlement, to determine the appropriateness of reimbursement for TQSA expenses. *E.g.*, *Sean P. Tweed-Kent*, CBCA 5528-RELO, 17-1 BCA ¶ 36,797, at 179,347; *Raymundo R. Lomboy*, CBCA 5979-RELO, 18-1 BCA ¶ 37,079, at 180,489; *Scheivert*, 20-1 BCA at 182,460.

The Federal Travel Regulation (FTR) applicable at the time of claimant's PCS, 41 CFR 302-6.105 (2021) (FTR 302-6.105), provides examples of compelling circumstances warranting the extension of the authorized period for claiming TQSE reimbursement. This regulation includes, as a "compelling reason," a directly relevant example:

(a) *Delivery of your household goods to your new residence is delayed* due to strikes, customs clearance, hazardous weather, fires, floods or other acts of God, or similar events.

FTR 302-6.105(a) (emphasis added).

Here, the agency did not reasonably exercise its discretion. By failing to consider claimant's inability to occupy permanent quarters when the lease commenced, the agency's determination of a three-day LQA/TQSA overlap was not based on the merits of claimant's request for an extension of TQSA. After relocating claimant to a foreign PDS with a prolonged delay of delivery of HHG and UB, the result of the agency's determination was to leave claimant and his family with the unreasonable choice of financial or physical hardship – either bearing forty-two days of hotel expenses or living in an apartment without furnishings. In so doing, the agency denied claimant's request for an extension of TQSA without consideration of the compelling reason here: the delayed delivery of claimant's HHG and UB and the resulting inability of claimant and his family to occupy permanent quarters until their furnishings arrived. *See, e.g., Byron L.*, CBCA 8157-RELO, 24-1 BCA ¶ 38,675, at 188,013; *Scheivert*, 20-1 BCA at 182,460.

This compelling reason justifies an extension of TQSA until the HHG arrived. However, the granting of the various allowances is a discretionary matter such that "the agency can properly limit TQSA reimbursement when it adjudicates a claim." *Lynn A. Ward*, CBCA 2904-RELO, 13 BCA ¶ 35,276, at 173,153; *see also George C. Dearing*, CBCA 6764-RELO, 20-1 BCA ¶ 37,692, at 182,992-93. Accordingly, we would ordinarily remand the matter to the agency to allow it to reasonably exercise its discretion. However, as the agency has acknowledged that Colonel Baker has the authority to grant the claim, which he has previously authorized (in the Second Baker Memorandum), we see no reason to remand this matter to the agency for proper exercise of its discretion. *Dearing*, 20-1 BCA at 182,993. We, therefore, grant the claim for an extension of the TQSA period to the date claimant's HHG and UB were delivered.

Decision

Claimant is entitled to reimbursement of TQSA for 101 days, from the beginning of the initial authorized period, March 15, 2022, through June 24, 2022.

*Allan H. Goodman*  
ALLAN H. GOODMAN  
Board Judge