



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 16, 2008

CBCA 983-RELO

In the Matter of JOSEPH P. LAWS

Joseph P. Laws, Columbia, MD, Claimant.

Brenda G. McNabb, PCS Section, Dallas Finance Center, Department of Homeland Security, Dallas, TX, appearing for Department of Homeland Security.

GOODMAN, Board Judge.

Claimant is an employee of the Department of Homeland Security. He has asked this Board to review the agency's denial of reimbursement of certain expenses incurred during his permanent change of station (PCS) transfer.

Factual Background

Claimant was issued travel orders for a PCS transfer from Columbus, Ohio, to Baltimore, Maryland. He was authorized thirty days of temporary quarters subsistence expenses (TQSE) with a report date at his new duty station in July 2007. When he submitted his voucher for reimbursement, the agency denied reimbursement of the amount he claimed for TQSE, stating that he had taken up permanent residence in the quarters that he had occupied at the new duty station.

On July 21, 2007, claimant signed a twelve-month lease for an apartment at his new duty station while he searched to buy a home. Claimant states that he intended at the time of entering into the lease that he would only stay in the apartment until he purchased a home. He states further that the lease had a twelve-month duration because the community did not offer month-to-month leases and the landlord understood that it was actually a temporary arrangement to allow him to continue looking for other housing options. He has submitted a letter from the property manager of the apartment community confirming this arrangement. The rental rate on the apartment was less expensive than a hotel.

Claimant rented furniture for the apartment, entering into a minimum three-month furniture lease, and before the lease expired he had his household goods (HHG) delivered to the apartment. Claimant states that he temporarily halted his search for a permanent residence in late August due to time and financial constraints, and it was then that he made arrangements to have his HHG delivered.

Claimant maintains that he consistently stated his intent to purchase a new residence upon arrival in Maryland. After a close inspection of the real estate market and the time constraints imposed by his work schedule, he temporarily suspended his house search until 2008.

The agency denied claimant's claim for reimbursement of thirty days of TQSE. It states that it reviewed the requirements of Federal Travel Regulation (FTR) 302-6.305, which provides the basis for determining whether quarters are temporary. The agency states further that it has taken into consideration the type of dwelling, duration of the lease, and the movement of household effects into the quarters. While claimant was originally authorized temporary quarters of thirty days, the agency contends that "the subsequent action he took of deciding to no longer look for permanent quarters may have caused the temporary quarters to be permanent."

Discussion

According to statute, when the Government transfers an employee from one permanent duty station to another in the interest of the Government, the agency has the authority to pay the subsistence expenses that the employee incurs while occupying temporary quarters, provided certain requirements are met. 5 U.S.C. § 5724a(c) (2000). The FTR in effect at the time of claimant's transfer defined "temporary quarters" for purposes of TQSE as follows: "The term 'temporary quarters' refers to lodging obtained for the purpose of temporary occupancy from a private or commercial source." 41 CFR 302-6.1 (2007). In determining whether quarters are temporary, the agency is directed by the FTR to consider factors such as the duration of the lease, movement of household effects into the quarters, the type of quarters, the employee's expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters. 41 CFR 302-6.305.

Generally, the execution of a long-term lease for a dwelling by an employee at his new duty station is a clear indication that the employee intends to occupy the rented quarters on other than a temporary basis. However, it is necessary to examine the remaining factors in order to ascertain the intent of the employee at the time he initially occupied the quarters.

Thus, the twelve-month lease executed by claimant does not necessarily disqualify claimant from reimbursement of TQSE. *Paul E. Dyer*, GSBCA 13802-RELO, 97-1 BCA ¶ 28,936. Rather, claimant has consistently maintained since his transfer his intent to purchase a new home at his new duty station and has made attempts to do so. The determination as to whether the quarters were initially temporary in nature is based on the intent of the employee at the time he moves into the dwelling. *Kim R. Klotz*, GSBCA 13648-RELO, 97-1 BCA ¶ 28,789.

In *Klotz*, the employee similarly entered into a long-term lease for an apartment with the intent of purchasing a home at his new duty station, only to find his house search extended by market conditions. Like claimant in the instant case, he therefore moved his HHG into the apartment while maintaining his desire to purchase a home. The Board held:

The regulation^[1] makes clear that the decision as to whether quarters are temporary or permanent should revolve primarily around the employee's intention at the time the living arrangement was entered into. This perspective tips the balance in favor of the factors which suggest that the apartment was originally intended to be temporary quarters. The long duration of his stay in the apartment is the result of his having learned . . . that he cannot afford to move; it thus has no impact on our judgment of his intention at that time.

97-1 BCA at 143,633.

In the instant case, while the agency states that claimant's actions "may have caused the temporary quarters to be permanent," we find no reason to question the veracity of claimant's assertion that, from the time of his transfer, he has intended to purchase a home at his new duty station. Accordingly, we are persuaded that despite his twelve-month lease claimant intended the apartment to be only a temporary residence until he could find suitable permanent quarters.

¹ The regulation to which the decision refers is the prior version of 41 CFR 302-6.305 which contains substantially similar language.

Decision

The claim is granted. Claimant is entitled to reimbursement of thirty days of TQSE pursuant to statute and regulation.

ALLAN H. GOODMAN
Board Judge