



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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October 23, 2007

CBCA 868-RELO

In the Matter of HECTOR SEDA

Hector Seda, Atlanta, GA, Claimant.

Ernesto Granillo, Detention & Deportation Officer, Office of Detention and Removal Operations, Immigration and Customs Enforcement, Department of Homeland Security, Washington, DC, 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 he incurred during a permanent change of station (PCS) move.

Factual Background

Claimant was issued travel orders for a PCS move with a report date as the day that claimant entered on duty at his new duty station. The travel orders authorized thirty days of actually-incurred temporary quarters subsistence expenses (TQSE). On May 1, 2007, claimant submitted a request to extend his TQSE period for an additional thirty days because the closing on his new residence was scheduled for May 31, 2007. The agency approved the additional thirty days of TQSE. Thereafter, claimant was advised by the mortgage company that he was required to close by May 16 or his down payment would increase substantially. He therefore closed on May 16, 2007. Because the seller had previously scheduled the moving of his household goods for May 31, 2007, the original closing date, the seller could not vacate the property until then. Claimant was therefore unable to occupy the property until May 31, and he arranged for his household goods to be delivered on June 4, 2007.

When claimant submitted his voucher for reimbursement of TQSE, the agency told him that the previously-approved thirty-day extension of his TQSE period was rescinded as of May 21, 2007, as the result of the change in the closing date. The agency stated that its rescission was based on the fact that claimant should have collected rent from the date of closing until the date the seller vacated the property, as this would have alleviated his need for additional TQSE for the period following the closing.

Claimant has requested that this Board review the propriety of the agency's partial rescission of the TQSE extension request.

### Discussion

As prescribed by the Federal Travel Regulation, an agency may authorize a transferred employee to receive actually-incurred TQSE, in increments of thirty days or less, for a period not to exceed 120 days. 41 CFR 302-6.104 (2006).

In this case, claimant was authorized an initial thirty-day period of TQSE and a thirty-day extension was granted in anticipation that his settlement would not occur until the end of that extended period. When the claimant's settlement occurred earlier than anticipated, the seller could not vacate the house until the end of the extension period. The issue in this case is whether the agency could rescind a portion of claimant's previously-approved TQSE period on the basis that claimant allowed the seller of the home to remain in the home without paying rent after settlement occurred.

One of our predecessor boards, the General Services Board of Contract Appeals (GSBCA), held that continued seller occupation justifies an extension of the TQSE period if this prevents the employee from occupying the premises. *Andrew W. Frank*, GSBCA 16919-RELO, 06-2 BCA ¶ 33,364 and cases cited therein. In *Frank*, the GSBCA held that the fact that an employee did not charge the seller rent to remain in the residence after the settlement is not a valid basis for denying TQSE. The GSBCA stated:

[T]he regulations which govern TQSE do not permit a reduction. As we have explained, the Federal Travel Regulation provides that one is either in temporary quarters, and therefore permitted to receive full reimbursement for TQSE incurred, or in permanent quarters, and therefore permitted to receive no reimbursement at all. "No half-way station exists." *Donald D. Fithian, Jr.*, GSBCA 16712-RELO, 06-1 BCA ¶ 33,204 (citing *Charles F. Ruerup*, GSBCA 15955-RELO, 03-1 BCA ¶ 32,227).

06-2 BCA at 165,405.

Accordingly, the fact that he did not charge the seller rent for remaining in the residence after the settlement date is not a valid basis for reducing claimant's entitlement to TQSE.

Claimant is entitled to the extension of TQSE that was authorized.

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Decision

The claim is granted.

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ALLAN H. GOODMAN  
Board Judge