



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 23, 2007

CBCA 891-RELO

In the Matter of JAMES H. FISH

James H. Fish, Pueblo, CO, Claimant.

Judy Hughes, Standards and Compliance, Finance Mission Area-Travel Pay, Defense Finance and Accounting Service, Columbus, OH, appearing for the Department of Defense.

SHERIDAN, Board Judge.

James H. Fish has asked the Board to review the decision of the Defense Finance and Accounting Service (DFAS) not to reimburse him for certain costs he incurred in connection with a permanent change of station (PCS) move from Hanau, Germany, to his new duty station, Fort Carson, Colorado. Mr. Fish, a civilian employee of the Department of the Army, was authorized thirty days of temporary quarters subsistence expenses (TQSE) in conjunction with his PCS.

On October 2, 2006, Mr. Fish and his wife moved into their residence near his new duty station that they had purchased prior to the PCS move. Mr. Fish acknowledges that he intended to make this house his permanent residence. They bought a bed, cooking utensils, and dishes, and, during the period in issue, lived in the residence while waiting for the delivery of their household goods (HHG) from Germany.

Mr. Fish filed a claim with the DFAS, Columbus Center, Travel Operations Division, and was paid \$477 for meals during the period he and his wife were living in their home without their HHG, from October 1 through 21, 2006. (He was in annual leave status from October 12 through 17 and did not claim or receive any TQSE expenses during that period.) Upon audit, the Travel Operations Division later determined that the \$477 payment was erroneous because during the period covered by the claim, Mr. Fish and his wife were

occupying their permanent residence. The agency acknowledges that Mr. Fish likely saved the Government money by living in his residence without his HHG as opposed to moving into temporary quarters.

Mr. Fish asks the Board to review the DFAS decision, particularly in light of paragraph C5354 of the Joint Travel Regulations (JTR), which he believes will lead us to conclude that his home should be considered temporary quarters because his HHG were unavailable for movement into the residence.

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 Federal Travel Regulation (FTR) implements the statute; the JTR, applicable to civilian employees of the Department of Defense, supplement the FTR. Both the FTR and the JTR recognize that the purpose of a TQSE allowance is to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary for the relocating employee to occupy lodging obtained for the purpose of temporary occupancy while arranging for permanent quarters at the new duty station.

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 (2006). The regulation further provided: "'Temporary quarters subsistence expenses' or 'TQSE' are subsistence expenses incurred by an employee and/or his/her immediate family while occupying temporary quarters." *Id.* 302-6.2. "The TQSE allowance is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters." *Id.* 302-6.3. The FTR provided:

§302-6.305 What factors should [an agency] consider in determining whether quarters are temporary?

In determining whether quarters are "temporary", [an agency] should 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.

Id. 302-6.305. The JTR that was applicable when the claimant made his PCS move in October 2006 states that TQSE "is intended to reimburse employees for reasonable

subsistence expenses incurred when they and/or their dependents must occupy temporary quarters.” JTR C13205.

Mr. Fish and his wife purchased the house prior to the PCS. This is not a residence that the claimant intended to occupy temporarily. The claimant and his wife remained in the house through the period allotted for TQSE even though the residence was less than comfortable. Under the circumstances described by Mr. Fish and DFAS, the claimant did not qualify for TQSE while occupying his home. The fact that the HHG had not yet been moved into the home is, in and of itself, an insufficient basis to consider the quarters temporary. In considering similar claims our predecessor General Services Administration Board of Contract Appeals (GSBCA) has held that an employee’s determination to live for an extended period in his own home, even before all HHG are delivered, is indicative of an intent to enter into permanent occupancy, thus terminating eligibility for TQSE. *Jeffrey Dewey*, GSBCA 16106-RELO, 04-1 BCA ¶ 32,445 (2003); *Shane C. Jones*, GSBCA 15462-RELO, 01-1 BCA ¶ 31,405.

We note that reimbursement of TQSE was found to be allowable in a case where an employee stayed briefly at his permanent, unfurnished residence before moving to temporary quarters. There, the GSBCA found that the evidence indicated the employee had not intended to inhabit his residence without his HHG. *Gerald Taylor*, GSBCA 15251-RELO, 00-2 BCA ¶ 31,016. Here, the claimant acknowledged that from the date this house was first occupied he intended to make it his permanent residence.

Also, where an employee stayed in his old residence prior to moving to a new duty station, but after the HHG had been packed for shipment, the residence was found to be constructively vacated and therefore constituted temporary quarters for the purpose of eligibility for TQSE. *Thomas R. Montgomery*, GSBCA 14888-RELO, 99-2 BCA ¶ 30,427. The holding in *Montgomery* is set forth in paragraph C5354 of the JTR and was cited by the claimant as authority for payment of his meal expenses. The facts and holding in *Montgomery*, where a once permanent residence was found to have been constructively vacated, thus becoming temporary quarters, are clearly distinguishable from the present situation.

Mr. Fish’s residence was, from the date it was first occupied, a permanent residence - as such, the payment of TQSE is not permitted.

Decision

For the reasons discussed above, the claim is denied.

PATRICIA J. SHERIDAN
Board Judge