



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 6, 2008

CBCA 1228-RELO

In the Matter of KATHLEEN C. KELLEY

Kathleen C. Kelley, Jackson, TN, Claimant.

Cheryl Holman, Chief, PCS Section, PCS Travel Team, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

VERGILIO, Board Judge.

On June 11, 2008, the Board received a claim from Kathleen C. Kelley regarding a relocation arising from a permanent change of duty station with a start date in July 2007. The Government had authorized reimbursement of temporary quarters subsistence expenses (TQSE) for sixty days. The Government denied a request for an extension of thirty days, concluding that the claimant had failed to demonstrate a compelling reason that justified an extension. The claimant disputes the denial of the requested extension. Because the claimant has not demonstrated that the determination was arbitrary, capricious, or contrary to law, the claim is denied; the claimant is not entitled to the extension.

Under statute and implementing regulations, an employee is not automatically entitled to receipt of a TQSE allowance for an initial sixty-day period or for an extension. If an agency determines that there is a compelling reason for continued occupancy of temporary quarters after sixty consecutive days, it may (not must) authorize an extension of up to sixty consecutive additional days. 5 U.S.C. § 5724a(c) (2000); 41 CFR 302-6.6, -6.104 (2007). The implementing regulations also provide examples of “compelling reasons,” that is, events beyond a claimant’s control and acceptable to an agency. One example is an inability to locate a permanent residence which is adequate for the family’s needs because of housing conditions at the new duty station. The examples are not limiting, but illustrative, as “similar reasons” is a given example. 41 CFR 302-6.105.

The burden is on the claimant to establish the liability of the Government. Rule 401(c). An authorizing official has considerable discretion to determine what constitutes a

“compelling reason” and whether to extend or not an employee’s TQSE period. This Board will not overturn an agency’s determination to approve or deny an extension unless the Board finds the determination to be arbitrary, capricious, or contrary to law. *Randall O. Peaugh*, GSBCA 16032-RELO, 03-2 BCA ¶ 32,313; *Jerry L. Landers*, GSBCA 14446-RELO, 98-1 BCA ¶ 29,666.

The claimant sought an extension of the TQSE allowance. In support, the claimant asserted that she was unable to locate permanent housing due to relocation issues. The request did not elaborate or provide support for the statement. A Government official disapproved the requested extension of thirty days, specifying: “Explanation of relocation issues is not provided to support an additional 30 day extension.”

In submissions to this Board, the claimant states that she was unable to locate a permanent residence that was adequate for her family’s needs because of housing conditions at the new duty station. Although this language mimics that in the example in the regulation, the claimant offers little support for the conclusion. The claimant writes that some problems arose regarding the sale of the home at the old duty station and other difficulties arose at the new duty station. As to the new duty station, the claimant identifies her dissatisfaction with the assigned relocation consultants (said to be at least four or five) and the hotels (noise, location, sanitary conditions, and other issues). Most particularly, the claimant references staying in various hotels while waiting for an appraisal of and title search for the home at the old duty station.

From the submissions of the claimant, one cannot determine the extent and scope of the search for a permanent residence or the actual housing conditions at the new duty station. Given the superficial record of support offered by the claimant, the Board concludes that the Government’s determination was not arbitrary or capricious and is not contrary to law.

The Board upholds the determination by the agency; the claimant is not entitled to the requested extension of TQSE.

JOSEPH A. VERGILIO
Board Judge