



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 13, 2012

CBCA 2780-RELO

In the Matter of DON H. WILLIAMSEN

Don H. Williamsen, Henderson, NV, Claimant.

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

POLLACK, Board Judge.

This claim arises out of a Department of Veterans Affairs (VA) demand for reimbursement of funds provided to the claimant, Don H. Williamsen, associated with his relocation from California to Nevada. As part of the relocation, Mr. Williamsen was initially granted temporary quarters subsistence expenses (TQSE) for sixty days. After the expiration of the initial expense period, and based upon his requests, he was authorized additional days. An advance payment was granted based upon communications from the employee that he needed thirty days, through February 24, 2012, because even though he would be closing on a permanent residence prior to that date, the relocation contractor would not be delivering his household goods until about two weeks thereafter, or about February 24.

Claimant settled on a permanent residence and the facts are undisputed that on February 2, 2012, his household goods were delivered to this property. Claimant has asserted that he then needed time to sort through the household goods and that a number of goods were damaged. He therefore remained at his temporary quarters and states that he did that based upon guidance he was given by the VA relocation official at or about the time of the advance, and that guidance indicated to him that he could continue to occupy the temporary quarters while he attended to getting matters in order at the new residence. He asserts he was lulled into continuing to occupy the temporary residence and now is being penalized for following the advice given.

Entitlement to the TQSE money in dispute is controlled by the Federal Travel Regulation (FTR). The VA cites the Board to the following FTR section as controlling.

302-6.108 When does my authorized period for claiming actual TQSE reimbursement end?

The period ends at midnight on the earlier of:

- (a) The day preceding the day you and/or any member of your immediate family occupies permanent residence quarters.
- (b) The day your authorized period for claiming actual TQSE reimbursement expires.

41 CFR 302-6.108 (2011).

The VA has also provided excerpts from its “Travel Policies and Procedures Relocation Package,” as well as an excerpt from Mr. Williamsen’s counseling memo. The memo sets out that a thirty day lease does not necessarily entitle one to reimbursement of the full cost of the lease, if an employee secures permanent housing prior to the end of the lease. The VA points out that Mr. Williamsen was able to close on his home and take delivery of furniture by February 2, 2012, and that his stay in temporary quarters past that date was for personal reasons, as he used the time to unpack and take inventory as to damaged and missing items.

The applicable regulation calls for TQSE to cease upon occupancy of the permanent residence. That is understood to mean when the property can be reasonably occupied by the employee. Based on the facts in this case, had the household goods not been delivered, TQSE could have continued. However, here, once the goods were delivered, the house qualified as occupied. The normal process of unpacking and sorting (including checking of damaged goods) as reported here does not negate the status of the property as occupied. Accordingly, under the regulations, TQSE had to cease.

In arguing his claim, Mr. Williamsen focuses on the advice he was provided. He boils the claim down to the legally operative issue that if he acted reasonably upon the advice of the agency relocation official and was provided inaccurate advice, which he relied upon to his detriment, then he should not have to pay back the incurred costs. For purposes of this decision, we will assume (without making a specific finding) that Mr. Williamsen was given erroneous guidance.

Unfortunately for Mr. Williamsen, even with us assuming he was not properly advised, the law is clear that he cannot prevail. As this Board stated in *William Coberly*, CBCA 1941-RELO, 10-2 BCA ¶ 34,568, a case dealing with entitlement for additional TQSE:

Based upon the governing statute and regulations, Mr. Coberly's reimbursement period for TQSE expired at midnight of July 1, 2009. It is unfortunate that Mr. Coberly relied on his supervisor's advice; however, erroneous advice provided by government officials cannot create or enlarge entitlements that are not provided by statute or regulation. *Emily G. Gibson*, CBCA 1160-RELO, 08-2 BCA ¶ 33,946; *Joseph E. Copple*, GSBCA 16849-RELO, 06-2 BCA ¶ 33,332. This Board, too, has no authority "to waive, modify, or depart from the Government's official travel regulations for the benefit of any federal employee who is subject to them." *Myles England*, CBCA 1244-RELO, 09-1 BCA ¶ 34,045, at 168,382 (2008), quoting *Charles T. Oliver*, GSBCA 16346-RELO, 04-1 BCA ¶ 32,614, at 161,405.

The above reflects a long line of cases confirming that erroneous advice and guidance as to the meaning of the law or regulations cannot justify relief. These cases highlight the necessity of an employee having to do his own research and due diligence. Based upon the law as it currently stands, erroneous advice or inadequate guidance cannot justify payment in violation of a travel/relocation regulation or an enabling statute. Accordingly, we deny the claim.

HOWARD A. POLLACK
Board Judge