



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 29, 2008

CBCA 934-RELO

In the Matter of JACKIE R. SHAMBLIN

Jackie R. Shamblin, Aberdeen, SD, Claimant.

Lori Brock, Chief, Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

BORWICK, Board Judge.

Claimant, Jackie M. Shamblin, contests the denial by the Department of Veterans Affairs (VA) of his claim for temporary quarters subsistence expense (TQSE) reimbursement for his family's temporary quarters at a place other than at his old or new duty station. For the reasons stated below, we grant the entitlement portion of the claim, but return the matter to the agency for determination of the amount due.

Background

On February 16, 2007, while claimant was working with the VA in Oklahoma City, Oklahoma, the Department of Health and Human Services, Indian Health Service (IHS) offered him a position in Aberdeen, South Dakota. Claimant accepted the offer. On March 12, 2007, the IHS issued claimant permanent change of station (PCS) transfer orders from Oklahoma City to Aberdeen and granted claimant PCS benefits including TQSE reimbursement. Claimant's effective date of transfer was April 15, 2007.

Although claimant moved to Aberdeen, his family stayed in Oklahoma for a number of reasons discussed below. Although remaining in Oklahoma, claimant's family entered temporary quarters.

Claimant worked in Aberdeen with the IHS for a brief period--less than four weeks--when the VA offered him a position in Tampa, Florida. Claimant accepted that position. On May 2, 2007, the VA issued claimant an authorization for his transfer from his duty station with IHS in Aberdeen to his new station with the VA in Tampa. The VA authorized claimant PCS benefits, including fifty days of TQSE reimbursement. Claimant's duty reporting date in Tampa was May 27, 2007.

According to the hotel bill, claimant's family stayed in temporary quarters in Oklahoma from April 13 through July 3, 2007. The schooling for claimant's children ended on May 30, 2007. However, claimant's son attended an additional two weeks of school-sponsored evening life-guard classes in which he had enrolled the previous February. Claimant's spouse was also a federal employee and was awaiting a reassignment from her agency. Claimant says that his spouse's employing agency approved a reassignment and a transfer effective July 7, 2007, with annual leave approved from July 1 through July 7.

Claimant asked the VA to reimburse him for his family's TQSE from May 27 through June 30, 2007, for a total of \$6360.52. By e-mail message of September 6, 2007, to claimant, a VA employee relayed the VA's travel policy office's denial of the request:

[Travel policy] said that your dependents are not entitled to temporary quarters in Oklahoma. Unless you have a special reason that the dependents did not move with you to South Dakota (i.e. a sick child and there was not a medical facility to care for the child in South Dakota). The reason that you gave was you could not sell your home in Oklahoma, that reason does not meet the VA's criteria for special circumstances. The agency will reimburse TQSE for dependents when they are in reasonable proximity of the old (South Dakota) or the new (Tampa) duty locations.

In an additional e-mail message of September 10, 2007, the VA's travel policy office clarified the reason for its denial of claimant's request:

[Claimant] may not be reimbursed TQSE for the family in this instance. Per the FTR, the family may receive TQSE when they are either in the proximity of the old duty station or the new duty station. The employee's old [permanent duty station] was in South Dakota, the new [permanent duty station] is in Florida, the family is in Oklahoma. Oklahoma is not in the vicinity of the [permanent duty station] in either [South Dakota] or [Florida]. The employee did not relocate the family to [South Dakota], there are no special circumstances related to the transfer from [South Dakota] to [Florida].

In its submission to the Board, the VA states:

The need for temporary quarters for the dependents in Oklahoma City was not created by the transfer to Tampa, [Florida,] but by the move to Aberdeen, [South Dakota,] and should be covered by the travel authority sending him to [Aberdeen]. The VA position is that the move to Aberdeen . . . created the special circumstances that apply to the dependents' temporary quarters. It was determined there are no special circumstances that apply to the transfer to [Tampa] and so the cost of the temporary quarters should not be covered by the travel authority sending him to [Tampa].

The VA candidly admitted that its office of human resources agreed that claimant had demonstrated special circumstances warranting reimbursement of the requested TQSE.

It turns out that claimant did not stay long in Tampa. After his arrival in Tampa, he disputed the amount of his recruitment bonus the VA paid him to relocate from Aberdeen to Tampa. Claimant threatened to leave his job in Tampa if he was not paid the full amount claimant believed he had been promised. The VA refused to pay that amount, whereupon claimant reapplied for, and was accepted at, his previous position with the IHS in Aberdeen. Claimant moved back to Aberdeen on August 4, 2007. In short, it appears that claimant spent from May 27 through August 4 in Tampa with the VA before moving back with the IHS at Aberdeen.

Discussion

The Federal Travel Regulation (FTR) in effect at the time of claimant's relocation from Aberdeen to Tampa, in its question and answer format, provides, with regard to TQSE eligibility:

Who may occupy temporary quarters at Government expense?

Only you and/or your immediate family may occupy temporary quarters at Government expense.

41 CFR 302-6.8 (2007).

Where may I/we occupy temporary quarters at Government expense?

You and/or your immediate family may occupy temporary quarters at Government expense within reasonable proximity of your old and/or new

official stations. Neither you nor your immediate family may be reimbursed for occupying temporary quarters at any other location, unless justified by special circumstances that are reasonably related to your transfer.

41 CFR 302-6.9.

May my immediate family and I occupy temporary quarters at different locations?

Yes. For example, if you must vacate your home at the old official station and report to the new official station and your family remains behind until the end of the school year, you may need to occupy temporary quarters at the new official station while your family occupies temporary quarters at the old official station.

41 CFR 302-6.10.

The issue in this case is whether special circumstances were present that justified claimant's family occupying temporary quarters at a place other than at the old permanent duty station--Aberdeen, South Dakota--or at the new duty station--Tampa, Florida. In such cases, one of our predecessor boards, the General Services Board of Contract Appeals (GSBCA), explained that under regulation the agency was to make the initial determination analyzing the conjunction of factors presenting the unique circumstance justifying payment of TQSE at a place other than the old or new duty station. *Elmer L. Grafford*, GSBCA 14176-RELO, 98-1 BCA ¶ 29,700; *see also Bridget R. Dunlap*, GSBCA 16884-RELO, 06-2 BCA ¶ 33,355. In *Grafford*, the board held that the conjunction of unique factors in that case could support an agency determination that the employee would be entitled to TQSE reimbursement when his family resided in temporary quarters at the employee's anticipated place of retirement rather than at the employee's old or new duty station. *Grafford*, 98-1 BCA at 147,214.

Here, the VA's travel policy office initially denied the request for reimbursement because it believed claimant's family stayed in Oklahoma rather than transfer to Aberdeen because claimant could not sell his house. This reason was wrong. Then, the VA's travel policy office said that the move to Aberdeen created the special circumstance that caused claimant's spouse to be in temporary quarters at a place that was neither the old (Aberdeen) nor the new (Tampa) duty station. This, too, was clearly wrong. The move to Aberdeen created the situation cognizable for TQSE reimbursement at both the old and new duty stations under 41 CFR 302-6.10 where an employee's family delays moving from the old to the new duty station to allow the employee's children to complete the school year. *See*

Daniel E. Vargas, GSBCA 15942-RELO, 03-1 BCA ¶ 32,145 (2002) (construing predecessor FTR provision at 41 CFR 302-5.10 (2001)).

Claimant's family residing in temporary quarters at a place that is neither at the old nor new duty station involves the application of 41 CFR 302-6.9. That circumstance was created by the VA's quick rehire of claimant for its position in Tampa soon after claimant's inter-agency transfer from the VA in Oklahoma to the IHS in Aberdeen before claimant's children and spouse could relocate to Aberdeen at the end of the school year. Obviously, the circumstance was "reasonably related" to the transfer as required by 41 CFR 302-6.9, because it was caused by the VA itself. The VA's travel policy office failed to examine that circumstance, but it appears that the VA's office of human resources did and came to the correct conclusion that claimant was entitled to TQSE reimbursement for his family even though his family resided in a place other than claimant's old or new duty station. Additionally, the reasons that kept claimant's family in Oklahoma until June 30, 2007, were the same for his initial transfer from Oklahoma City to Aberdeen and for his subsequent transfer from Aberdeen to Tampa.

We will not remand the matter to the VA for another entitlement decision, when one component of the VA has already rendered the reasonable decision and a remand would just mean another bureaucratic step further delaying relief as to entitlement. It is this Board's duty to decide entitlement.

Claimant's family stayed in Oklahoma until June 14 so that claimant's son could complete his school-sponsored life guard course. Completion of school is recognized under 41 CFR 302-6.10 as justification for TQSE reimbursement when the family stays in temporary quarters at the old duty station, and is sufficient here for reimbursement in this case as well. So, too, is the claimant's spouse's awaiting reassignment. *See Leahrae Rudolph*, GSBCA 15424-RELO, 01-1 BCA ¶ 31,332 (job hunt justifies employee's family staying in temporary quarters at old duty station). In short, claimant is entitled to TQSE reimbursement for the period May 30 through June 30, 2007, which is less than the fifty days of TQSE reimbursement the VA authorized claimant. However, the amount of claimant's reimbursement must be otherwise allowable under the FTR. The matter is returned to the VA for calculation of the amount due.

ANTHONY S. BORWICK
Board Judge

