

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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February 1, 2001

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GSBCA 15289-RELO

In the Matter of STEVEN F. BUSHEY

Steven F. Bushey, N. Sioux City, SD, Claimant.

Ronald L. Page, Manager, Management Programs Division, Federal Aviation Administration, Washington, DC, appearing for Department of Transportation.

**WILLIAMS**, Board Judge.

Claimant, an air traffic control manager with the Federal Aviation Administration (FAA), challenges the agency's determination that he was overpaid for certain expenses he incurred in conjunction with his permanent change of station. Specifically, the agency seeks to recoup \$2735.80 in real estate expenses and \$1130.55 in temporary quarters subsistence expenses (TQSE) claimant received while living in a trailer on the property.

With respect to the real estate expenses, claimant purchased property for \$125,000 and then largely demolished and rebuilt the house located on it and claimed the expenses incurred in conjunction with the remodeling and construction, based upon a \$325,000 appraisal of the remodeled home and additional financing. The agency determined that claimant should have been reimbursed based upon the initial purchase of the dwelling and not on the subsequent renovation. However, governing regulations permit claimant to be reimbursed based upon expenses incurred incident to permanent financing on the completed house, so long as these expenses are only incurred one time and are not duplicative. Therefore, we grant this portion of the claim.

With respect to TQSE, the agency determined that once claimant took possession of the property he should not have been reimbursed for TQSE, because living in a trailer on the property was claimant's personal choice and not necessitated by claimant's transfer. However, governing regulations permit reimbursement of TQSE if the employee demonstrates that he intended to occupy the quarters temporarily at the beginning of the living arrangement. Here, claimant did manifest his intent that living in the trailer would be temporary while his house was being constructed; this intent was further evidenced by the small size of the quarters and the inability of claimant to fit his household goods in the trailer.

## Background

On January 15, 1998, claimant was selected for the position of air traffic manager in Sioux City, Iowa. As a result, he was transferred from Eadon Prairie, Minnesota, to Sioux City with a reporting date of March 2, 1998. Claimant's travel orders were issued on February 15, 1998. Claimant lived for twenty-one days in a residence motel. On March 27, 1998, he signed a purchase agreement to purchase the property in question.

Following a preplanned vacation, claimant, dissatisfied with the motel, moved his recreational vehicle (RV) to a commercial campground where he spent a week. Beginning on April 13, 1998, claimant moved his RV onto the property he had contracted to purchase and entered into an agreement with the owners to pay them \$10 a day for plug-in privileges. On June 9, 1998, claimant's wife and son vacated their Minnesota home and moved into the RV with him, and on June 11, 1998, he began claiming TQSE.

On July 13, 1998, claimant closed on the sale of his home in Minnesota. On July 24, 1998, claimant closed on the purchase of the Sioux City property; the purchase price was \$125,000. The home had been rented before claimant purchased it. The day after he closed on the Sioux City property, claimant began demolishing the house. He explained that he had intended all along to put up "a real house on the property," because this home was an old, small structure with rotting decks and was heavily infested with carpenter ants. The only portions of the old structure that were incorporated into the new house were the foundation and the floor deck. Everything else, including all electrical and plumbing systems, was torn down and removed.

When claimant purchased the property, he took out a mortgage in the amount of \$93,163.21, and this initial loan had a maturity date of January 24, 1999. He then secured a transition loan for remodeling the house in the amount of \$90,000 with a maturity date of February 28, 1999. The bank extended the due dates of the loans until the house was functionally completed. At that time an appraisal was made, and the house was appraised at \$325,000. However, claimant had underestimated the cost of materials to complete the project and had to take out another loan in the amount of \$49,236.92. Claimant consolidated these three loans into a loan for \$240,000.

Claimant's household goods were delivered to the newly renovated home on March 12, 1999.

On April 16, 1999, claimant signed a settlement sheet, which listed the three loans described above, listed the value of the home as \$325,000, and showed settlement charges to borrower of \$5352.11. It was this settlement sheet which claimant submitted for reimbursement in conjunction with the purchase of the Sioux City home. The agency initially reimbursed claimant based on the \$240,000 loan and a \$325,000 purchase price because claimant had never submitted the settlement sheet for the original \$125,000 purchase in July 1998. The agency now maintains that claimant was not entitled to be reimbursed based upon the latter transactions and seeks recoupment of a \$2735.80 overpayment in real estate expenses.

Claimant sought reimbursement of \$4947 for TQSE between June 11, 1998, and August 9, 1998. Throughout this time, claimant and his family were living in the RV on the property they had purchased while the house was being renovated. The agency contends

that claimant was overpaid TQSE by \$1130.55, which represents meals and incidental expenses after the date claimant closed on the property, i.e., July 24, 1998.

### Discussion

#### Real Estate Expenses

Statute authorizes federal agencies to pay expenses which transferred employees incur in purchasing a home at their new duty stations. 5 U.S.C. § 5724a(d) (Supp. IV 1998). In implementing the statute, however, the Federal Travel Regulation (FTR) details which particular expenses are reimbursable. It provides that a transferred employee who chooses to construct a new home at his new duty station may recover real estate transaction expenses to the same extent as he would if he had bought an existing home. 41 CFR 302-6.1, -6.2(d)(1)(x) (1997). Specifically, FTR 302-6.2(d)(vi) states:

Except as otherwise provided in paragraph (d)(1) of this section, the following items of expense are not reimbursable:

. . . .

(iv) Expenses that result from construction of a residence.

41 CFR 302-6.2(d)(2)(vi).

Paragraph (d)(1) reads, in relevant part:

Reimbursable items. The following expenses are reimbursable in connection with the sale and/or purchase of a residence, provided they are customarily paid . . . by the purchaser of a residence at the new official station, to the extent they do not exceed specifically stated . . . amounts customarily paid in the locality of the residence:

. . . .

(x) Expenses in connection with construction of a residence, which are comparable to expenses that are reimbursable in connection with the purchase of an existing residence.

41 CFR 302-6.2(d)(1)(x).

This Board, following the decisions of the Comptroller General, has construed these provisions of the FTR to state that an employee who chooses to construct a home at the new duty station will be permitted to recover real estate expenses to the same extent as an employee who purchased an existing home. Where each stage of the building process involves a number of expenses which would appropriately be reimbursed in connection with the purchase of an existing residence, the employee may be reimbursed only once for each type of expense that is allowable under the regulations. Michael J. Spann, GSBCA 13685-RELO, 97-2 BCA ¶ 29,019; David R. Petak, B-247860 (July 23, 1992);

James A. Schampers, 69 Comp. Gen. 573 (1990); Michael D. May, B-223112 (Nov. 25, 1986).

This Board, again following decisions of the Comptroller General, has concluded that the expenses incurred incident to permanent financing on the completed house are most representative of expenses an employee would incur to purchase an existing residence and that entitlement determinations should be based primarily on the examination of that settlement. Spann; Schampers; Ray F. Hunt, B-226271 (Nov. 5, 1987). When similar fees and expenses are incurred more than once as a result of the decision to construct a new home rather than buy an existing residence, the duplicate fees are considered to have resulted from the construction of the new home and are not reimbursable. Spann; Richard T. Bible, B-208302 (July 17, 1984).

Thus in the instant case, claimant may be reimbursed for the expenses incurred incident to permanent financing on the completed house -- financing on the consolidated \$240,000 loan. However, claimant may not be reimbursed for any type of expense more than once. Michael B. Holtzclaw, GSBCA 14044-RELO, 97-2 BCA ¶ 29,287.

### TQSE

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).

The FTR in effect at the time of claimant's transfer defined "temporary quarters" as follows:

Generally, the term temporary quarters refers to lodging obtained from private or commercial sources for the purpose of temporary occupancy after vacating the residence occupied when the transfer was authorized. However, the occupancy of temporary quarters that eventually become the employee's permanent residence shall not prevent payment of the temporary quarters allowance if, in the agency's judgment, the employee shows satisfactorily that the quarters occupied were intended initially to be only temporary. In making this determination, the agency should consider factors such as the duration of the lease, movement of household effects into the quarters, type of quarters, expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters.

41 CFR 302-5.2(c).

Applying these factors in the instant case, we conclude that claimant clearly manifested the intent to occupy the trailer only on a temporary basis while his house was being constructed. Claimant never moved his household effects into the RV, which was far too small to house his family on a permanent basis, and claimant immediately demolished the dwelling on the premises and worked diligently to complete the new house so that he could occupy it permanently.

If an employee occupies quarters that eventually become permanent quarters, the agency can still reimburse the employee for TQSE if, in the agency's judgment, the employee makes a satisfactory showing that he or she intended initially to occupy the quarters only temporarily. Arthur T. O'Connor, GSBCA 14422-RELO, 98-1 BCA ¶ 29,598. The principal consideration in making this determination is the intention of the employee at the time the living arrangement was entered into. Brenda Byles, GSBCA 14592-RELO, 99-1 BCA ¶ 30,156; Kim R. Klotz, GSBCA 13648-RELO, 97-1 BCA ¶ 28,789; see also Patricia H. Songer, B-260380 (June 10, 1996); Robert D. Hawks, B-205057 (Feb. 24, 1982).

In the case of Patricia H. Songer, the Comptroller General reasoned that although claimant continued to live on her boat, and the agency concluded that it appeared that the boat was her permanent residence, TQSE was granted because the boat was much smaller quarters than claimant had occupied at her former duty station and her household goods had to be placed in storage. Songer. Moreover, the governing regulations do not prohibit reimbursement of TQSE merely because an employee is constructing a new residence and occupying temporary quarters while the residence is being built. Indeed, the FTR expressly contemplates extending TQSE for compelling circumstances and one such compelling reason is that an employee "could not occupy his new permanent residence because of unanticipated problems (e.g., . . . short-term delay in construction of the residence)."

#### Decision

Claimant's claim for real estate expenses incurred in connection with the purchase of his completed house is granted so long as the costs are reasonable, customary, and not duplicative. Claimant was properly paid for TQSE; the agency should not attempt to recoup those amounts.

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MARY ELLEN COSTER WILLIAMS  
Board Judge