

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

February 7, 2001

GSBCA 15424-RELO

In the Matter of LEAHRAE RUDOLPH

Leahrae Rudolph, Stansbury, UT, Claimant.

Vickie L. Nadolski, Western Region Director, National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce, Salt Lake City, UT, appearing for Department of Commerce.

HYATT, Board Judge.

Claimant, Leahrae Rudolph, an employee of the National Weather Service (NWS), transferred pursuant to a permanent change of station (PCS) orders from Anchorage, Alaska, to Salt Lake City, Utah, in the fall of 1999. Claimant and her spouse sold their home in Alaska as of October 1999. The household furnishings were shipped to Utah for storage until a house there was purchased. Ms. Rudolph relocated to Utah; her spouse remained in Alaska, at his current job, while instituting a search for employment in Utah. He moved into an unfurnished apartment in October. The Rudolphs purchased a house in Utah in December 1999. NWS paid for two months (October and November) of temporary quarters subsistence expenses (TQSE) for Mr. Rudolph. Approximately one year later, upon learning that claimant's spouse had still not relocated to Utah, but remained in the apartment, NWS informed her of its intent to institute a collection action on the ground that the apartment really constituted permanent quarters and that the TQSE had been paid improperly.

Ms. Rudolph explained to NWS that both she and her spouse need to be employed and that they have intended all along for him to move to the new home in Utah once he finds a job in Salt Lake City. With the understanding that Mr. Rudolph had up to two years to join his spouse at her new assignment, they budgeted approximately one year for the job search in Salt Lake City. Initially, Mr. Rudolph, who is employed in the telecommunications industry, thought he had good prospects with a local employer in Salt Lake City. That opportunity did not pan out due to a merger with another company. He has continued and expanded his job search but, with a shrinking pool of telecommunications positions in Salt Lake City, has not yet found new employment. Instead he has remained employed in Alaska and has stayed in the apartment. He has kept only minimal household items with him in

Alaska and did not sign a lease for the apartment. Although the Rudolphs intended for this situation to be short term, the job search has admittedly been more prolonged than initially anticipated.

After reviewing claimant's explanation, NWS determined that Mr. Rudolph's occupancy of the apartment could not be considered temporary for two reasons. First, claimant's spouse has stayed in the apartment for over a year, which NWS found gives rise to a presumption that the quarters are permanent. Second, NWS questions whether initial occupancy of the apartment was intended to be temporary when the couple had budgeted for a year or more for him to make the move to Salt Lake City. In addition, NWS notes that Mr. Rudolph does not appear to have started a serious job search while receiving TQSE, but waited until late December to submit his resumes to local Salt Lake City employers. The agency is of the view that Mr. Rudolph's occupancy of the apartment in Alaska was not and is not temporary, and thus that TQSE should not have been paid. The agency has billed Ms. Rudolph for the amount of \$4474.66.

Discussion

The Federal Travel Regulation (FTR) provides that TQSE may be paid for family members who remain in temporary quarters at the old duty station when the transferred employee reports to the new official station. 41 CFR 302-5.10 (1999). In this case, claimant's spouse needed to remain in Alaska at his current place of employment while exploring employment opportunities in the Salt Lake City area. Accordingly, NWS authorized and paid TQSE for two months. Eligibility for TQSE ended thereafter, when the Rudolphs purchased, and claimant occupied, a house in Salt Lake City. Mr. Rudolph continued to remain in Alaska, however.

The FTR contains a requirement that in the event temporary quarters become the permanent residence quarters the employee, to receive a TQSE allowance, must demonstrate that he or she initially intended to occupy the quarters temporarily. 41 CFR 302-5.14. In determining whether quarters are temporary the agency is directed to consider such factors 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. 41 CFR 302-5.305.

In general, issues concerning eligibility for TQSE when temporary quarters become permanent arise with respect to the employee's occupancy of quarters at the new duty station. This case presents an unusual circumstance with continued occupancy of quarters at the old duty station because of the spouse's lack of success in finding employment at the new duty station. Claimant and her spouse have explained that while they hoped Mr. Rudolph could relocate soon, based on their assessment of his job prospects in Salt Lake City it could take more than a few months. According to Mr. Rudolph's landlord in Alaska, his initial period of expected occupancy was for October 1999 through December 1999. In mid-December 1999, Mr. Rudolph asked to extend the rental on a month-to-month basis. No deposit was requested or given. The landlord has inspected the premises and noted that very few furnishings are kept in the apartment, which persuades him that Mr. Rudolph did not and does not plan to stay there any longer than necessary.

The mere fact that occupancy of temporary quarters extends for an unusually lengthy period does not automatically mean that the quarters were not temporary at the inception and that the employee did not qualify for reimbursement of TQSE. The driving factor is the employee's intent. The Rudolphs have jointly purchased a home in Utah and moved virtually all of their household possessions there. Although he may not have commenced his job search as quickly as NWS thinks he should have, Mr. Rudolph did start circulating his resume in December 1999 and is continuing to search for employment in Utah. The Rudolphs could not be certain when Mr. Rudolph moved to the apartment how long his search for a new job would take. He did not sign a lease because he did not know how long he would remain in Alaska. This situation is not unlike those in which the employee stays in "temporary" quarters for an extended period of time while searching for a suitable house or waiting for new construction to be completed, or because other circumstances prevent a prompt move to permanent quarters. See Steven F. Bushey, GSBCA 15289-RELO (Feb. 1, 2001) (awaiting completion of renovations of house to be occupied permanently); Thomas P. Simon, GSBCA 15131-RELO, 00-1 BCA ¶ 30,792 (employee occupied rental home for lengthy period but intended to be there temporarily and made substantial efforts to locate suitable location to build permanent quarters); Stephen A. Monks, GSBCA 15029-RELO, 00-1 BCA ¶ 30,650 (1999) (employee rented townhouse for one year on a temporary basis because of spouse's pregnancy but continued to look for larger home for permanent quarters).

Here, the fact that Mr. Rudolph's job search has taken longer than a few months does not warrant the conclusion that he intended to occupy the apartment permanently when he moved out his old residence. The facts and circumstances as explained by the Rudolphs support their contention that his occupancy of the apartment in Alaska was initially intended to be a temporary measure and continues to be temporary. Claimant was properly reimbursed for these TQSE costs and the agency should not undertake to recoup the amounts paid.

CATHERINE B. HYATT
Board Judge