

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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January 29, 2001

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GSBCA 15476-RELO

In the Matter of TIMOTHY J. HELKE

Timothy J. Helke, Missouri City, TX, Claimant.

Bonnie Britten, Team Leader, Travel Policy Division, Department of Veterans Affairs, Washington, DC, appearing for Department of Veterans Affairs.

NEILL, Board Judge.

Pursuant to 31 U.S.C. § 3529 (1994 & Supp. IV 1998), the Department of Veterans Affairs asks our opinion regarding an employee's request for the extension of authorized temporary quarters subsistence expenses (TQSE). Based upon the facts submitted, we conclude that the requested extension may be given.

## Background

On June 22, 2000, the Department of Veterans Affairs issued orders to Mr. Timothy J. Helke transferring him from Cleveland, Ohio, to Houston, Texas. The orders authorized TQSE for thirty days. Upon arrival at his new permanent duty station, Mr. Helke moved into temporary quarters and began a search for adequate permanent quarters. His housing needs were somewhat out of the ordinary owing to the fact that he is a quadriplegic. Mr. Helke was unable to find adequate permanent quarters during his first thirty days in temporary quarters. Unfortunately, he overlooked the need to request an extension of this period. Indeed, he did not become aware of a need to do so until after he submitted a voucher covering the second thirty-day period. At that time, officials processing his voucher realized that no formal request for extension had been filed. On being notified of the need to submit a formal request, Mr. Helke promptly did so. The agency advises that it finds Mr. Helke's reason for requesting an extension of TQSE to be entirely acceptable but questions whether there is a legal basis for granting an extension since the initial thirty-day increment of authorized TQSE expired prior to Mr. Helke's request for an extension.

## Discussion

The Federal Travel Regulation (FTR) has the following provision regarding the duration of authorized TQSE:.

How long may I be authorized to claim actual TQSE reimbursement?

Your agency may authorize you to claim actual TQSE in 30-day increments, not to exceed 60 consecutive days. However, if your agency determines that there is a compelling reason for you to continue occupying temporary quarters after 60 consecutive days, it may authorize an extension of up to 60 additional consecutive days. Under no circumstances may you be authorized to claim actual TQSE reimbursement for more than a total of 120 consecutive days.

41 CFR 302-5.104 (2000) (FTR 302-5.104). A subsequent provision explains that a "compelling reason" is an event that is beyond the control of the employee and acceptable to his or her agency. *Id.* 302-5.105.

It is clear from the statute authorizing agencies to grant TQSE (5 U.S.C. § 5724a(c) (Supp. IV 1998)) and from the implementing provisions in the FTR (FTR pt. 302-5) that the authorization of TQSE is a matter left to the broad discretion of the employee's agency. For this reason, we have consistently held that we will not overturn an agency's determination to extend a TQSE period unless we consider that exercise to be arbitrary, capricious or contrary to law. *E.g.*, Daniel A. Rishe, GSBCA 14444-RELO, 98-1 BCA ¶ 29,677; William T. Stowers, GSBCA 14099-RELO, 97-2 BCA ¶ 29,096; Holly Rowe, GSBCA 14037-RELO, 97-1 BCA ¶ 28,934.

In situations where an initial increment of TQSE has actually been authorized by an agency, we find nothing in the present regulation which prohibits the agency from approving an additional increment of thirty days or even an extension, for compelling reasons, beyond the first sixty days where, for reasons of inadvertence, the prior authorization has expired. What is of paramount importance in situations such as this is the agency's own aim and intent. If, after the expiration of an authorized increment, agency officials are advised that a transferring employee has yet to find adequate permanent housing, and the employee's reason for failing to do so is, in the judgment of the agency, acceptable, then we see no reason why it should not be within the discretion of the agency, if it so wishes, to amend the employee's orders to ensure that the original authorization continues to run concurrently with the employee's use of temporary quarters. Of course, the agency's discretion in this regard remains limited to the maximum 120 days allowed under statute and regulation.

In the instant case, the agency obviously intended Mr. Helke to have TQSE pending his search for adequate permanent quarters. It, therefore, authorized an initial thirty-day increment of TQSE -- not because it did not intend to authorize a longer period but simply because the FTR wisely provides that the authorization should be given in increments. We do not believe it is the intent of the FTR that the aim and intent of an agency to approve TQSE for a transferring employee should be frustrated simply because a prior authorized increment inadvertently or accidentally expired.

We, therefore, pose no objection to the agency's approving additional TQSE as proposed.

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EDWIN B. NEILL  
Board Judge