

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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April 10, 2001

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GSBCA 15481-RELO

In the Matter of VANESSA A. DEAL

Vanessa A. Deal, Washington, DC, Claimant.

Jeanette Bushner-Hill, Chief, Travel Section, Department of Veterans Affairs  
Financial Services Center, Austin, TX, appearing for Department of Veterans Affairs.

**DANIELS**, Board Judge (Chairman).

The fate of a claim by Department of Veterans Affairs (VA) employee Vanessa A. Deal stemming from a 2000 transfer hinges on an issue raised by this employee regarding a 1998 transfer. The interconnection between the two relocations makes the situation appear complex, but the issue presented is actually quite simple: Did the VA act permissibly in rejecting a request for an extension of time for eligibility for reimbursement of temporary quarters subsistence expenses (TQSE) incurred?

The matter came to a head in 2000, when the VA transferred Ms. Deal from Pittsburgh, Pennsylvania, to Washington, D.C. Ms. Deal submitted a voucher for reimbursement of expenses she had incurred in relocating, and the agency paid it in full -- except for a deduction of \$1,640.10. The amount of the deduction represented money which the agency believes the employee had owed it since 1998, when she had been transferred to Pittsburgh and had received in cash advances more than the agency thought she was due in reimbursement. Upon learning of the deduction, Ms. Deal reopened the matter that had been quiescent for two years.

In 1998, when the VA sent Ms. Deal to Pittsburgh, it had authorized her to receive TQSE for the first sixty days during which she was living in temporary quarters. At the end of this period, the apartment she had rented was not yet ready for occupancy; the owner was still repairing and painting the space, installing storm windows, and refinishing floors. Ms. Deal was not able to move into the apartment until the eighty-sixth day after her entitlement to TQSE had begun. She did not apply for an extension of the TQSE period until she was living in the apartment. The VA rejected the request because it was not made before her sixtieth day in temporary quarters. Ms. Deal says that her delay in making the request was

due to her lack of knowledge about procedures for securing reimbursement of relocation expenses.

The authority for agencies to pay TQSE to employees whom they transfer from one permanent duty station to another in the interest of the Government is contained in 5 U.S.C. § 5724a(c) (Supp. IV 1998). This statute allows an agency to pay TQSE for a period of up to sixty days while the employee or his family is occupying temporary quarters. Id. § 5724a(c)(1)(A). The statute also provides that the period of eligibility "may be extended up to an additional 60 days if the head of the agency concerned or the designee of such head of the agency determines that there are compelling reasons for the continued occupancy of temporary quarters." Id. § 5724a(c)(2).

The regulation which implements this statute, the Federal Travel Regulation (FTR), explains that "[a] 'compelling reason' is an event that is beyond [the employee's] control and is acceptable to [his] agency." 41 CFR 302-5.105 (1997). The regulation gives four examples of such an event. They are:

- (a) Delivery of [the transferred employee's] household goods to [his] new residence is delayed due to strikes, customs clearance, hazardous weather, fires, floods or other acts of God, or similar events.
- (b) [The employee] cannot occupy [his] new permanent residence because of unanticipated problems (e.g., delay in settlement on the new residence, or short-term delay in construction of the residence).
- (c) [The employee is] unable to locate a permanent residence which is adequate for [his] family's needs because of housing conditions at [his] new official station.
- (d) Sudden illness, injury, or death of employee or immediate family member.

Id. We have characterized these examples as "involv[ing] events over which the employee had no say, and which either were catastrophic or essentially affected the physical availability of permanent housing at the new [permanent duty station]." Baron L. Hudson, GSBCA 14284-RELO, 98-1 BCA ¶ 29,527.

Because statute and regulation make the grant of additional time in which an employee may receive TQSE contingent on the existence of "compelling reasons" for the continued occupancy of temporary quarters, and afford an agency broad discretion in deciding whether such reasons are present, we will not overturn an agency's determination as to an extension of the period unless we find it to have been arbitrary, capricious, or contrary to law. Ralph M. Martinez, GSBCA 14654-RELO, 98-2 BCA ¶ 30,105; Audrey J. Shegog, GSBCA 14621-RELO, 98-2 BCA ¶ 30,049; Rifat A. Ajjuri, GSBCA 14506-RELO, 98-2 BCA ¶ 29,788; Daniel A. Rishe, GSBCA 14444-RELO, 98-1 BCA ¶ 29,677.

This is one of those rare cases in which the agency's determination must be overturned because it was contrary to law. The one and only reason the VA gave for rejecting Ms.

Deal's request for an extension of the TQSE period was that the request was made after the additional period ended. The FTR does not require that a request be made during the initial period of TQSE eligibility or at any other time.<sup>1</sup> The VA's decision not to consider the merits of the request at all, because of the time at which the request was made, was not consistent with the regulation.

The VA must reconsider the employee's request in light of the requirements of the FTR. It must decide whether the fact that Ms. Deal's apartment was still under renovation when her initial period of TQSE eligibility expired was a "compelling reason" for extending the period for an additional twenty-five days (or such other time as the agency considers appropriate). We note that one example of a compelling circumstance given by the FTR is that "[the employee] cannot occupy [his] new permanent residence because of unanticipated problems (e.g., delay in settlement on the new residence, or short-term delay in construction of the residence)." The VA should consider whether the renovation of Ms. Deal's apartment meets this description. In so doing, the agency should ascertain whether the length of time consumed by the renovation could have been anticipated by the employee at the time she signed the lease for the apartment. If the VA reasonably concludes that Ms. Deal chose this particular place of abode knowing full well that she could not occupy it until the date she ultimately moved in, the agency would be justified in rejecting her request for extended TQSE. If, on the other hand, the agency reasonably finds that the renovation took an unexpectedly long time, a grant of the request would be justified.

If, after the VA has reconsidered Ms. Deal's request, the agency confirms its rejection and the employee believes that this determination was arbitrary, capricious, or contrary to law, the employee may ask us to review the determination.

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STEPHEN M. DANIELS  
Board Judge

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<sup>1</sup>An earlier version of the FTR, applicable to employees whose transfers were effective before March 22, 1997, required that the "compelling reason" for extension of the TQSE period occur during the initial period of eligibility. Rishe; Thomas M. Hood, GSBCA 13845-RELO, 97-1 BCA ¶ 28,954; see 41 CFR 302-5.2(a)(2) (1996). Even this old regulation did not limit the time during which a request for extension could be made, however.