

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 3, 2001

GSBCA 15651-RELO

In the Matter of RAFAEL ALVAREZ

Rafael Alvarez, San Antonio, TX, Claimant.

Priscilla Garrett, Chief, Personnel Branch, Kelly Air Force Base, TX, appearing for Department of the Air Force.

NEILL, Board Judge.

Mr. Rafael Alvarez, a civilian employee of the United States Air Force, recently completed a permanent change of station (PCS) move. His orders authorized reimbursement of temporary quarters subsistence expenses (TQSE) for sixty days. When he requested that this period be extended, the request was denied. Mr. Alvarez asks that we review the agency's denial. For the reasons set out below, we affirm the agency's decision and, consequently, deny his claim.

Background

_____ On May 30, 2001, Mr. Alvarez was issued orders assigning him to Corpus Christi Army Depot in Texas. His previous duty station, also in Texas, was at Kelly Air Force Base (AFB). At the time Mr. Alvarez was issued his orders, that base was already scheduled for closure. Mr. Alvarez's reporting date to his new duty station was June 18, 2001.

On July 25, 2001, Mr. Alvarez requested that his TQSE authorization be extended by another ninety to one-hundred and twenty days. In making this request, he explained that, during his first two weeks at Corpus Christi, he had been in training, and that he was already scheduled to go on temporary duty (TDY) from August 6 to 17. He further explained that he had decided to build a new home in the area but that it would not be completed until some time after Thanksgiving.

In reply to Mr. Alvarez's request, the agency stated that an extension -- if given -- could not be for more than an additional sixty days. The agency also questioned some of the reasons given in support of the requested extension. It was pointed out to the claimant that the decision to build appeared to have been a recent one notwithstanding his arrival in Corpus Christi in mid-June. Mr. Alvarez was also asked to have his supervisor verify that training prevented him from seeking permanent housing. In addition, the agency advised

Mr. Alvarez that training on base would probably be viewed as no different from normal work status.

In response to the agency's inquiry, Mr. Alvarez stated that he had not been authorized a house-hunting trip prior to coming to Corpus Christi and that, after his arrival there, his wife had been in an automobile accident which made it impossible for her to continue house-hunting until July 4.

Mr. Alvarez was apparently unable to confirm that training he received during his first two weeks at Corpus Christi precluded him from searching for housing. He did, however, provide the agency with evidence that he was required to serve on active military duty for three days during the month of July and for one day during the month of August. As a result, the agency agreed to extend his original sixty days of TQSE by an additional four days. As to the TDY scheduled for August, which Mr. Alvarez originally claimed as justification for the requested extension, this was canceled shortly after the extension was requested.

Aside from the four-day extension for military service, the agency denied Mr. Alvarez's request for an extension of TQSE. The official denying the request was, and remains, of the opinion that the delay Mr. Alvarez had encountered in finding adequate housing was not one which justifies a further extension of TQSE since it is attributable to causes within claimant's personal control.

Mr. Alvarez disagrees with the agency's ruling. He states that an extension is warranted for the following reasons: (i) rules relating to relocation benefits were not clearly communicated to him, (ii) data bases for priority placements were poorly maintained and hindered his reassignment to an installation in Texas after closure of Kelly AFB was announced, (iii) no house-hunting trip was authorized before his reporting date to Corpus Christi, (iv) his first two weeks at Corpus Christi were dedicated to training, (v) his wife's car accident and job delayed any house-hunting trip until early July, and (vi) his TDY orders for the month of August were promptly canceled once he cited them as a reason for extending his TQSE.

Discussion

As a civilian employee of the Department of Defense, Mr. Alvarez is subject to the Department's Joint Travel Regulations (JTR). The JTR, which implement and, to a limited degree, supplement the Federal Travel Regulation (FTR), which applies to all civilian employees of the Federal Government, have the following provision regarding extension of the TQSE:

1. The order-issuing official must determine there are compelling reasons (due to circumstances beyond the employee's control) for the continued temporary quarters occupancy. Examples of circumstances which might be considered as being beyond the employee's control include:

- a) delayed shipment and/or delivery of HHG [household goods] to the new residence due to extended transit time incident to ocean transportation, strikes, customs, clearance, hazardous weather, fires, floods, or other acts of God;
- b) delayed occupancy of new permanent quarters because of unanticipated problems (e.g., unforeseen delays in settlement for new quarters, unforeseen short-term delay in construction of a new dwelling);
- c) inability to locate permanent quarters adequate for family needs because of housing conditions at the new PDS;
- d) sudden illness, injury, or death of employee or immediate family member; and
- e) similar factors.

JTR C13210-B.1. This provision of the JTR is essentially the same as that found in the FTR. See 41 CFR 302-5.105 (2000) (FTR 302-5.105).

The requirement that there be "a compelling reason" for extending an employee's TQSE beyond the initial sixty-day period is based upon the statute. See 5 U.S.C. § 5724a(c) (Supp. V 1999). In implementing the statute, the FTR has defined "compelling reason" as "an event that is beyond your control and is acceptable to your agency." FTR 302-5.105. The definition of "compelling reason" in the JTR provision set out above is essentially the same as that found in the FTR except that the JTR provision does not explicitly say, as the FTR does, that the reason beyond the employee's control must also be one acceptable to the agency.

The reasons given by Mr. Alvarez in presenting his case to the Board are somewhat more detailed than those he originally presented to the agency in support of his original request for an extension. The agency, however, continues to find them unacceptable.

In response to Mr. Alvarez's contention that rules relating to relocation benefits were not clearly communicated, the agency explains that, from the time of the closure announcement in 1995 until closure in 2001, there were numerous PCS briefings at Kelly AFB. In addition, printed materials were available on relocation entitlements and communications in employee newsletters were sent to each employee by name. The agency also rejects claimant's contention that the poor quality of the data bases for the priority placement program somehow justifies extension of his TQSE. It was as a result of this program that Mr. Alvarez ultimately succeeded in obtaining a reassignment in Texas, which brought with it various relocation benefits – including the authorization of a house-hunting trip. A copy of the orders provided for the record does in fact show that, contrary to Mr. Alvarez's contention, a house-hunting trip was authorized.

The agency likewise remains unpersuaded that the automobile accident of claimant's wife and his training and TDY commitments justify extension of his TQSE. It is clear from information provided for the record that Mrs. Alvarez was able to assist, at least to a limited degree, in the house-hunting efforts. As to training, no confirmation appears to have been given by Mr. Alvarez's supervisor that training on base at Corpus Christi precluded the claimant from searching for housing. As to his TDY scheduled for the month of August, this was canceled. We fail to see how this cancellation could serve, as claimant suggests, as an additional reason for extending claimant's TQSE.

Mr. Alvarez's agency remains convinced that the ultimate reason why he has requested an extension of his TQSE is that he belatedly elected to construct a new residence with delivery scheduled for some time after Thanksgiving – a decision well within the claimant's control. Mr. Alvarez has argued that if sixty days can be granted for a house already under construction, he does not see why more time should not be given for a home where the start of construction has been delayed. In reply, the agency, relying on the JTR provision quoted above, notes that an agency might well conclude that an "unforeseen short-term delay in construction of a new dwelling" might be a matter beyond an employee's control justifying extension of TQSE. The delay in the construction of Mr. Alvarez's new home, however, is not viewed by his agency as either unforeseen or short-term.

It is clear from the statute authorizing agencies to grant TQSE and from the applicable JTR provision that the authorization of TQSE is a matter left to the broad discretion of the employee's agency. These are matters in which we do not become involved unless we conclude that the agency's exercise of discretion is arbitrary, capricious or contrary to law. E.g., James E. Roberts, GSBCA 15592-RELO (Aug. 6, 2001); Daniel A. Rische, 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 this case, the agency has acted responsibly in dealing with claimant's request. Its decision to deny the request is reasonable and in accordance with the applicable JTR provision. We, therefore, affirm the decision and, thus, deny Mr. Alvarez's claim.

EDWIN B. NEILL
Board Judge