

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 14, 2002

GSBCA 15696-RELO

In the Matter of JEFFREY J. SCUSSEL

Jeffrey J. Scussel, Missoula, MT, Claimant.

Sandra S. Williams, National Finance Center, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

BORWICK, Board Judge.

The Department of Agriculture requests a decision pursuant to 31 U.S.C. § 3529 (Supp. V 1999) (section 3529 decision) in the matter of Jeffrey J. Scussel, claimant, on claimant's eligibility for reimbursement of temporary quarters subsistence expenses (TQSE). The agency poses three questions:

1. Should [claimant's] agency have authorized any temporary quarters expense, allowance for [its] employee, considering the fact that the employee already had possession of a suitable permanent residence, and as a matter of personal preference, chose not to transport a small portion of [his] household goods for his use during the short interval until his wife could vacate the old residence?
2. If the transferring employee elects a fixed rate option, which requires no receipts, how does the agency approving official justify that the temporary quarters subsistence expenses allowance is being used for the purpose intended?
3. If the transferring employee elects a fixed rate option, must his agency offer an allowance for a full [30] days?

The facts as stated in the record are as follows. On December 5, 2000, claimant purchased a home twenty miles south of Missoula, Montana. Claimant's purchase occurred four months prior to the agency's advertisement of what was to become claimant's new position. By letter dated April 19, 2001, the agency authorized claimant's transfer in the interest of the Government from Libby, Montana, to Missoula, Montana, with a reporting date of May 20, 2001. Claimant's original travel authorization did not provide an entitlement

to either a house hunting trip or TQSE, as claimant and his wife had already purchased a home in the area of his new duty station.

On May 16, the agency amended the travel authorization to authorize thirty days of fixed TQSE for claimant and his spouse. Claimant's spouse needed to remain in Libby, Montana, to fulfill her employment obligations as a teacher. Claimant and his spouse decided to keep all of their household goods at their old residence until the end of the school year.

Claimant reported for duty at his new duty station on May 21 and entered temporary quarters on that date. On June 6, claimant's spouse joined claimant in temporary quarters and she "split time with friends and a motel in Libby." Claimant and spouse moved into their home near Missoula on June 13.

Claimant states that he chose not to transport some of his household goods before his spouse moved on advice of agency personnel that it would or could jeopardize transport of the remainder of his household goods. He also felt he could not claim two separate transports. Claimant states that he made every effort to have his household goods transported through proper channels as soon as possible after his wife's move.

The purpose of TQSE is "to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters." 41 CFR 302-5.3 (2001). When an employee has secured permanent quarters at the new station and the employee is capable of moving into the new quarters, the employee is not entitled to TQSE, because the decision to remain in temporary quarters rather than move into the available permanent quarters is a matter of personal preference, not necessity. John L. Pipes, GSBCA 15161-RELO, 00-1 BCA ¶ 30,787; Joseph Viggiano, GSBCA 14976-RELO, 00-1 BCA ¶ 30,607 (1999) (construing Joint Travel Regulations).

Here, however, claimant and his family were not capable of moving into his permanent quarters because his wife was required to remain at the old residence to fulfill her professional obligations. Had claimant chosen to move his household goods immediately and leave his spouse in temporary quarters at the old station, then claimant would have been entitled to TQSE for the cost of his spouse's temporary quarters. 41 CFR 302-5.10.

Instead, claimant chose to have his spouse remain at the old station with the family's household goods. It would have been burdensome for claimant move a portion of his household goods when he arrived at the new station and a portion when the spouse moved to the new station. Further, an employee's reimbursement for shipment of household goods may not exceed the "cost of transporting the property in one lot by the most economical route from the last official station of the transferring employee . . . to the new official station." 41 CFR 302-8.2(e). Forcing the claimant to engage in two shipments of household goods might have caused him to exceed the maximum allowable payment for shipment of household goods and would have been unreasonable. The agency's action in authorizing TQSE was reasonable.

Responding to the second question, the FTR provides that the claimant does not have to document TQSE under the fixed rate reimbursement method. 41 CFR 302-5.12.

However, the agency is not obliged to offer the fixed rate method to any employee. The FTR gives agencies discretion whether to offer the fixed rate method or actual expense method. 41 CFR 302-5.11, -5.304(a)-(c). However, once the agency makes both methods available to the employee, the employee may chose which method he or she prefers. 41 CFR 302-5.11.

In answer to the third question, the FTR permits agencies to offer the fixed rate method up to thirty days; the FTR does not require the agency to grant the full thirty days. 41 CFR 302-5.200. Even under the fixed rate method, an employee may receive TQSE only for days when he is actually living in temporary quarters. Sandra L. McClellan-Whittle, GSBCA 15573-RELO (Feb. 12, 2002).

ANTHONY S. BORWICK
Board Judge