

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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July 5, 2002

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GSBCA 15832-RELO

In the Matter of MELINDA SALMON

Melinda Salmon, Philadelphia, PA, Claimant.

Catherine Baytion, Office of the General Counsel, Centers for Disease Control and Prevention, Atlanta, GA, appearing for the Department of Health and Human Services.

**GOODMAN**, Board Judge.

Claimant, Melinda Salmon, is an employee of the Centers for Disease Control and Prevention. She has asked this Board to review the agency denial of her request to extend the period of temporary quarters subsistence expense (TQSE) as the result of her permanent change of station (PCS).

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## Factual Background

Claimant received PCS orders to relocate from Georgia to Philadelphia, Pennsylvania. She received notice of her new position on October 22, 2001. Her report date at the new duty station was December 17, 2001. Claimant was granted a sixty day period of TQSE, which expired on February 14, 2002.

She found a house in Philadelphia and made an offer for the property on January 4, 2002. She proposed a closing date of February 28, 2002, but the owners required a closing date of March 26, 2002. The realtor advised Ms. Salmon that the market in Philadelphia was quite competitive. Claimant states that had she not accepted the stipulation of a later closing date, she might have lost the house.

Claimant accepted the seller's terms, even though the closing date was after the date her TQSE expired. She submitted a request to the agency for a forty one-day extension of the TQSE period from February 15 to March 27, 2002. The agency denied her request. Claimant then submitted a request for reconsideration, stating that her case "involved extenuating circumstances" that were "outside of [her] immediate control" and included "a delay in the closing date of the property that [she and her husband had] under contract, as well as the nature of the current real estate market in Philadelphia." She stated that her efforts included having a house under contract within two weeks of relocating to

Philadelphia, "in spite of the Christmas and New Year holidays." She enclosed a letter from the real estate agent attesting to "the competitive nature of the housing market in Philadelphia." The record contains no evidence of either receipt by, or a response from, the agency concerning the request for reconsideration.

### Discussion

Claimant asserts that she had sufficient reason to extend her period of TQSE arising from her PCS move.

Statute provides that reimbursement of TQSE may be extended for an additional sixty days after the initial period if the head of the agency or his designee determines that there are compelling reasons for the continued occupancy of temporary quarters. 5 U.S.C. 5724a(c)(1), (2) (2000).

The Federal Travel Regulation contains the following applicable provisions:

§ 302-5.104 - 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.

§ 302-5.105 What is a "compelling reason" warranting extension of my authorized period for claiming actual TQSE reimbursement?

A "compelling reason" is an event that is beyond your control and is acceptable to your agency. Examples include, but are not limited to:

(a) Delivery of your household goods to your new residence is delayed due to strikes, customs clearance, hazardous weather, fires, floods or other acts of God, or similar events.

(b) You cannot occupy your 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) You are unable to locate a permanent residence which is adequate for your family's needs because of housing conditions at your new official station.

(d) Sudden illness, injury, or death of employee or immediate family member.

This Board has recognized that agencies have considerable discretion in deciding whether to grant a transferring employee's request for extension of the TQSE period. Glenda T. Harvey, GSBCA 14851-RELO, WL 438996 (June 30, 1999). Thus, the Board reviews for abuse of discretion an agency's denial of such requests. The Board upholds an agency's decision so long as the decision is "neither arbitrary nor capricious." Michael D. Haragan, GSBCA 14663-RELO, 98-2 BCA ¶ 30,102 .

To determine whether the agency has abused its discretion in denying requests for extension of the TQSE period, the Board considers whether an agency is consistent in its treatment of such requests. In Harvey, the Board affirmed the agency's denial even where employees argued that inflated prices caused by the influx of 1500 or more new employees to the area, resulting from consolidation of two bases, made it difficult to locate suitable, affordable housing. The Board noted the Army's exercise of exceptional consistency in its treatment of similar requests during the consolidation of the two bases.

The Board also considers whether an employee enters a contract knowing that the contract includes a move-in date after the initial TQSE period. In Haragan, the Board noted that the employee was aware that the contractual completion date for the construction of his home was after expiration of his initial TQSE period. The contract clearly specified that the builder had until a date after the expiration of the initial TQSE period to finish the house. The claimant pointed to certain circumstances outside of his control - depletion of construction resources and inclement weather - which lead to construction delay. The Board nevertheless determined that the agency's denial was neither arbitrary nor capricious.

In the instant case, the agency has submitted information to show that it has consistently applied a strict policy of granting extended TQSE only in rare circumstances. An affidavit from the Associate Director for Management and Operations in the Office of the Director states that he is the official within the agency who has the authority to grant employee requests for extension of the TQSE period. Beyond sixty days, the Center has a strict policy of disapproving requests that lack compelling and unusual circumstances. During the last two years, he has approved only two requests for extension of the TQSE period beyond the initial sixty days for circumstances not similar to the instant case.

The affiant further explains that he denied claimant's request because the circumstances she described - the competitive nature of the housing market in Philadelphia - were not sufficiently compelling nor unusual. He observed that many of the agency's field staff encounter this problem when they move to various larger cities in the United States.

The agency has established that it has a consistent policy to determine extensions of the TQSE period. In the instant case, there is no evidence that the agency has abused its discretion by denying claimant's request for extension of the TQSE period. Claimant's case is similar to the circumstance in Haragan, where the claimant entered a contract for construction of a house with a completion date that was after expiration of the initial TQSE period. Just as the claimant in Haragan entered a contract knowing that the builder was entitled to finish the house after expiration of the initial TQSE period, claimant in the instant case entered a contract knowing that the closing date for her new residence was after expiration of her initial TQSE period. While the nature of the housing market may have contributed to this circumstance, the agency's determination that this was not a compelling

reason under the FTR or its existing policy to extend the TQSE period was reasonable and not an abuse of discretion.

Decision

The claim is denied.

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ALLAN H. GOODMAN  
Board Judge