

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

July 16, 2002

GSBCA 15839-RELO

In the Matter of KEITH E. KUYPER

Keith E. Kuyper, Barnesville, GA, Claimant.

Deborah A. Osipchak, Manager, Travel and Payroll Services Branch, Office of Financial Services, Department of Transportation, Washington, DC, appearing for Department of Transportation.

BORWICK, Board Judge.

In this matter, the Federal Aviation Administration (FAA) denied claimant Keith E. Kuyper reimbursement for temporary quarters subsistence expenses between July 12, 2001 through August 27, 2001, because it determined that during that period claimant occupied permanent quarters. Claimant appealed that determination to the Board, claiming that the quarters were temporary. We sustain the decision of the agency. In view of all the circumstances, the agency reasonably concluded that as of July 12, claimant occupied permanent quarters.

On April 27, 2001, the agency authorized claimant's Permanent Change of Station (PCS) move from Beaver Falls, Pennsylvania, to Hampton, Georgia, and authorized claimant reimbursement of TQSE for a period not to exceed sixty days. The agency later amended the travel authorization to increase the maximum TQSE period to ninety days.

Claimant entered temporary quarters--the Oakwood Apartments--on June 12, 2001 and remained in those quarters until July 11. On June 14, claimant signed a three-year lease with a landlord for a residence in Barnesville, Georgia, commencing on July 23, 2001, and ending on July 22, 2004. On July 11, claimant moved his household goods into the Barnesville residence, and on July 12, moved himself and his family into the residence. For reasons not made clear in the record, claimant paid his landlord on a month-to-month basis from July 10 through August 9 and from August 10 through September 9.

Claimant submitted a voucher claiming TQSE reimbursement for the period July 12, 2001 through August 27, 2001. The agency denied claimant reimbursement of TQSE for that period because (1) the employee had not proven that the Barnesville residence was temporary, (2) one month-to-month receipt was hand-written and was "questionable," with

the second month-to-month receipt being from a firm that the agency could not find in phone books or on the internet, and (3) the employee moved his HHG from storage into the residence, which indicated to the agency that the residence was not temporary.

Since October 15, 1998, The FAA Travel Policy (FAATP), not the Federal Travel Regulation (FTR), defines the travel and relocation entitlements for FAA employees. Alan D. Hendry, GSBCA 15585-RELO, 01-2 BCA ¶ 31,535. The FAATP provides that the authorized TQSE period ends at the earlier of "the day preceding the day you and/or any member of your immediate family occupies permanent residence quarters" or when the authorized period for claiming actual TQSE expires. FAATP 302-22.109. If temporary quarters become permanent residence quarters, an employee may receive a TQSE allowance only if the employee shows in a manner satisfactory to the agency that the employee initially intended to occupy the quarters temporarily. FAATP 302-22.12.

The FAATP does not have a provision setting forth the factors to be considered in deciding whether quarters are temporary. However, the FTR subsection at 41 CFR 302-5.305 (2001), in effect at the time claimant reported for duty at his new station, provided that in determining whether quarters are temporary the agency should consider factors such as the duration of the lease, movement of household effects into quarters, the type of quarters, the employee's expression of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters. 41 CFR 302-5.305. The FAA explains that it relies on this FTR subsection in determining whether quarters are temporary. Therefore, we will look to the subsection and our case law in applying the subsection to guide us in determining whether the agency acted reasonably in this instance.

We consider all the factors enumerated at 41 CFR 302-5.305. Thomas P. Simon, GSBCA 15131-RELO, 00-1 BCA ¶ 30,792. The existence of one factor by itself will not qualify a residence as "temporary," or "permanent" for the purpose of determining whether the quarters were permanent or temporary. See Shane C. Jones, GSBCA 15462-RELO, 01-1 BCA ¶ 31,405 (month-to-month payment arrangement does not alone qualify the existing residence as "temporary" although a month-to-month arrangement is one indicia of intent); Leahrae Rudolph, GSBCA 15424-RELO, 01-1 BCA ¶ 31,332 (long-term temporary lease arrangement of over one year not proof that residence was permanent in light of other factors: spouse looking for job at new duty station, living in apartment without many household furnishings at old duty station, month-to-month lease with no deposit at that apartment). The principal determination is the intention of the employee at the time the living arrangement was entered into. Steven F. Bushey, GSBCA 15289-RELO, 01-1 BCA ¶ 31,291; Simon.

Claimant points to the receipts for month-to-month payment, and his hope to be able to buy a house when financial circumstances permitted, as evidencing an intent to occupy the rented quarters temporarily, thus qualifying claimant for TQSE reimbursement from July 12 through August 27, 2001. However, claimant's move of household goods and his family, and claimant's entering a lease for the Barnesville residence which lasts until June 22, 2004, show the intent to stay in the Barnesville residence, more or less permanently. Claimant's hope to be able to purchase a house when circumstances permit is too vague to qualify the residence as temporary quarters for TQSE purposes. Jerold Cooley, 68 Comp. Gen. 554 (1989). In short, the combination of factors demonstrates that the agency acted reasonably. The Board therefore denies the claim.

ANTHONY S. BORWICK
Board Judge