

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 13, 2002

GSBCA 15909-RELO

In the Matter of DON E. STOUT

Don E. Stout, Bowie, MD, Claimant.

Ray E. York, Deputy Director, Travel Systems & Procedures, Indianapolis Center, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

The Department of the Army transferred Don E. Stout from Redstone Arsenal, Alabama, to Alexandria, Virginia, in April 2001. Mr. Stout's travel orders authorized reimbursement of sixty days of temporary quarters subsistence expenses (TQSE), but the Army rejected his claim for such reimbursement. According to the agency, "Inasmuch as Mr. Stout had already secured permanent lodging before reporting for duty at his new assignment, and he and his wife occupied and continue to maintain a joint household, we see no validity to his claim for TQSE." We agree with the agency that this is good cause for rejecting the claim.

Background

Mr. Stout's wife is also a civilian employee of the Department of the Army. In December 2000, the Army transferred Mrs. Stout from Alabama to Aberdeen, Maryland. After living in a hotel for more than two months, Mrs. Stout located an apartment to her liking in Bowie, Maryland. In February 2001, Mr. and Mrs. Stout signed a lease for this apartment¹ and Mrs. Stout moved into it.

The Stouts' daughter lived in the same apartment complex in which their new apartment was located. Just as Mr. Stout was relocating from Alabama, the daughter was

¹Mr. Stout says that he "did not sign a lease on 17 Feb 2001. . . . I signed a copy of the **proposed** lease on the 10th of June 2001." This statement is not true. The record contains a copy of the lease signed by both Mr. and Mrs. Stout and dated by both of them "17 Feb 01."

leaving Maryland to begin an educational program in Minnesota. Her apartment lease had not yet expired, however. According to Mr. Stout, for the next two months, he and his wife slept in their daughter's apartment and used their own unit for the storage of their household goods. Mr. Stout paid his daughter's rent for those two months. In June, he says, the daughter's lease expired and he and his wife moved to their own apartment.

Discussion

The Federal Travel Regulation explains that "[t]he TQSE allowance is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters." 41 CFR 302-5.3 (2000) (emphasis added). Similarly, the Department of Defense's Joint Travel Regulations provide that "TQSE . . . is intended to reimburse employees for reasonable subsistence expenses incurred when they and/or their dependents must occupy *temporary quarters*." JTR C13105 (Apr. 1, 2001) (emphasis added).

Mr. Stout has not demonstrated that it was necessary for him to occupy temporary quarters when he arrived at his new duty station. He and his wife had already leased an apartment in the area, and the fact that they lived there beginning in June 2001 shows that the unit was sufficient for the two of them. The decision to sleep in their daughter's apartment in the same complex, and to use the couple's own unit for the storage of household goods, was made voluntarily, rather than from necessity. Reimbursement would therefore be contrary to the purpose of the governing regulations. Cf. Charles R. Stroble, GSBCA 15571-RELO, 01-2 BCA ¶ 31,564 (transferred employee who lived at new duty station in apartment he was already obligated to lease not entitled to TQSE).

Even if Mr. Stout had demonstrated that it was necessary for him to occupy his daughter's apartment instead of his own during his first two months at his new duty station, we still would not find that the Army should have reimbursed him for the rent he paid for the daughter's apartment. When a transferred employee lives with a friend or relative upon arriving at a new station, TQSE lodging payments are limited to the additional costs imposed on the friend or relative due to the employee's lodging at the home. Donald Mixon, GSBCA 14957-RELO, 00-1 BCA ¶ 30,606 (1999); John Wesley Summers, GSBCA 14600-RELO, 98-2 BCA ¶ 29,975. There is no evidence that any costs were imposed on the Stouts' daughter, in addition to rent she was already required to pay, because of her parents' habitation in her apartment.

We add a procedural note before closing. This case was initiated by the Army, which forwarded Mr. Stout's claim to us after denying it. Rule 402(a)(2) (48 CFR 6104.2(a)(2) (2001)). In accordance with our Rules of Procedure, in docketing the case, we told Mr. Stout of the filing and afforded him thirty days to reply to the agency's position. Rule 404. Mr. Stout failed to submit a reply within the time allowed. Our staff called him to ask whether he intended to file comments, and he asked permission to make a filing within two weeks' time. We granted this request. Although the amended deadline for his reply was more than a month ago, he has not submitted comments or replied to our staff's many efforts to reach him by telephone. We consequently have decided the case solely on the basis of the extensive record submitted by the agency.

Decision

The claim is denied.

STEPHEN M. DANIELS
Board Judge