

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

February 5, 2003

GSBCA 15940-RELO

In the Matter of ROD W. SCHMIT,

Rod W. Schmit, Panama City, FL, Claimant.

Judy Hughes, Travel Pay Services, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

HYATT, Board Judge.

Agencies are not authorized to pay temporary quarters subsistence expenses (TQSE) of a transferring employee once that employee has occupied permanent quarters. In this case, the facts support the agency's determination that the employee moved into the house with the intention of occupying it permanently. Thus, the transferred employee who rented the house he eventually purchased is not entitled to TQSE for the rental period even though there may have been some possibility that the employee may not have been able to complete the purchase.

Background

Claimant, Rod W. Schmit, a civilian employee of the Department of the Navy, transferred from Rockport, Texas, to Panama City, Florida, in the summer of 2001. Claimant's initial report date to his new permanent duty station was June 17, 2001. Prior to moving, claimant and his spouse tried to locate temporary accommodations in Panama City, but they were unable to find housing that would accommodate both children and pets at a reasonable cost for at least two months under a month-to-month leasing arrangement. As a result, claimant's original report date on June 17 was extended to July 15. In a house hunting trip taken in June, claimant's spouse was able to locate a home for purchase and she made an offer to buy the house contingent on the sale of the home in Texas.

Two days before claimant's amended report date, claimant was offered the opportunity to rent the house he and his spouse hoped to buy. Since he still had not sold his home in Texas, claimant accepted the opportunity to rent this house because he needed a place to stay

until he could purchase the house and had found no viable alternatives. Claimant's home in Texas sold on July 29, and he specified a closing date of August 31 for the purchase of the house in Florida to minimize the time spent in what he believed was temporary occupancy.

The Defense Finance and Accounting Service (DFAS) declined to reimburse Mr. Schmit's claim for TQSE for the period when he rented the house prior to purchasing it, reasoning that claimant effectively occupied permanent quarters once he moved into the house.

Discussion

By statute, when the Government transfers an employee from one permanent duty station to another in the interest of the Government, the agency is authorized to pay the subsistence expenses that the employee incurs while occupying temporary quarters, provided certain requirements are met. 5 U.S.C. § 5724a(c) (2000). Under regulations in effect at the time of Mr. Schmit's transfer, the term temporary quarters is defined to refer to lodging obtained from private or commercial sources for the purpose of temporary occupancy. The occupancy of temporary quarters that eventually become the employee's permanent residence will not necessarily preclude payment of the temporary quarters allowance if the employee can show, in a manner satisfactory to the agency, that the quarters were initially intended to be occupied temporarily. Generally, the types of factors that bear on this showing include considerations such as the duration of the lease, movement of household effects into the quarters, type of quarters, expressions of intent, attempts to secure a permanent dwelling, and length of time the employee occupies the quarters. E.g., Steven F. Bushey, GSBCA 15289-RELO, 01-1 BCA ¶ 31,291; 41 CFR 302-5.1, -5.14 (2001); JTR C13110-A, C13205-B.6.

In the circumstances described by Mr. Schmit and DFAS, claimant did not qualify for TQSE while occupying this house. This is not a residence that claimant intended to occupy temporarily until he could locate a suitable house for purchase. The exception stated in the Federal Travel Regulation and Joint Travel Regulations is intended to apply to situations where a transferring employee occupies a residence temporarily, with the intent to move to a different location for permanent quarters, and subsequently remains in those premises rather than to move elsewhere as he or she originally planned. The exception has thus been applied where an employee leased an apartment while continuing to look for an affordable house to purchase for permanent quarters, but then remained in the apartment after determining he could not afford a house in the new location. Kim R. Klotz, GSBCA 13648-RELO, 97-1 BCA ¶ 28,789; accord Patricia H. Songer, B-260380 (June 10, 1996) (employee remained on a boat which she was trying to sell in order to afford alternative housing); Brenda Byles, GSBCA 14592-RELO, 99-1 BCA ¶ 30,156 (employee temporarily rented a home she believed she could not afford to purchase to accommodate the needs of a handicapped child; she later looked into buying the house when she could find nothing suitable for rent). Application of the exception hinges on the employee's initial intent to relocate into different quarters at the time he or she originally occupied quarters at the new duty station.

Although Mr. Schmit was not in a position to purchase the house he occupied at the time he and his family moved in, this house was in fact the residence that they intended to occupy on a permanent basis. The circumstances of this claim are very similar to those set forth in Ronald W. Martineau, GSBCA 14157-RELO, 97-2 BCA ¶ 29,298. In that case, claimant had found a house he wanted to buy at his new permanent duty station. He arranged to rent the house pending the sale of his house at the old duty station and entered into a contract providing for purchase of the house contingent upon the sale of his former residence. The Board upheld the agency's disallowance of TQSE, explaining that under the applicable regulations when an employee undertakes to rent a house at the same time he or she has arranged to purchase the same house, the period for which the house is rented cannot be regarded as temporary occupancy as defined under the FTR and the JTR, and TQSE cannot be paid for that period.

Here, claimant points out that he had not initially intended to rent the house he bought, but found himself with no viable alternative. In addition, the Schmit family lived in this house for some four weeks without furniture because they delayed delivery of household furniture until they were reasonably sure the Texas house would sell and the purchase of the Florida home would take place. Finally, Mr. Schmit notes that no one explained what constituted temporary quarters so that he would be aware that this arrangement would not qualify.

We recognize that the Schmits made diligent efforts to locate suitable temporary housing in Florida and also tried to minimize the time in temporary quarters. Claimant is understandably frustrated that TQSE was authorized but, because of the circumstances, cannot be paid. Nonetheless, although he may not have initially wanted to rent the house he planned to purchase, this is what he did. The relevant intent is not whether the employee plans to rent or purchase -- it is whether the transferring employee intends to continue to occupy the dwelling in question on a permanent basis. Mr. Schmit, at the time he moved in on a rental basis, fully intended to stay in this house once he sold the house in Texas and was able to proceed with the purchase.¹ When all of the circumstances are viewed as a whole, the decision to disallow TQSE was proper and in accordance with the applicable regulations.

CATHERINE B. HYATT
Board Judge

¹ Claimant's decision to delay delivery of household goods to the house does not serve to offset other factors supporting the conclusion that claimant's intent was to remain in these quarters permanently if possible.