

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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March 13, 2003

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GSBCA 15955-RELO

In the Matter of CHARLES F. RUERUP

Charles F. Ruerup, Yuma, AZ, Claimant.

Barbara J. Gaydos, Acting Travel Pay Site Manager, Defense Finance and Accounting Service Rock Island, Rock Island, IL, appearing for Department of Defense.

**DANIELS**, Board Judge (Chairman).

Charles F. Ruerup, an employee of the Department of the Army, was transferred from Fort Richardson, Alaska, to Yuma Proving Ground, Arizona, in November 2001. His travel orders authorized reimbursement of temporary quarters subsistence expenses (TQSE) for a maximum of sixty days. Mr. Ruerup submitted a claim for these expenses, but the claim was denied by the Defense Finance and Accounting Service (DFAS). TQSE is available only for days when a transferred employee lives in temporary quarters, and DFAS concluded that Mr. Ruerup lived solely in permanent quarters once he moved to Arizona. Mr. Ruerup asks us to review DFAS's decision.

## Background

Mr. Ruerup and his wife took a househunting trip to the Yuma area shortly before moving there. They found few available houses to rent and none available to rent with less than a one-year lease. They were unable to buy a home until they had the proceeds from the sale of their residence in Alaska, and that residence had not yet been sold. The Ruerups believed that moving into a house was important because Mrs. Ruerup needed a place in which her special diet could be prepared. It was also important because with four children, living in a hotel temporarily would be expensive and moving from the hotel later might require changing schools. The Ruerups signed a one-year lease for a four-bedroom house and moved there on arrival in Yuma. They had some of their household goods delivered to the house, but left most of the goods in storage to minimize the costs of a future move to another residence. Mr. Ruerup states unequivocally, "We are not going to buy the house we are currently in."

In response to Mr. Ruerup's presentation of the above facts, DFAS wrote:

After considering information, it was determined that the . . . one-year lease agreement was permanent quarters based on the following:

- a. one year lease,
- b. movement of HHG [household goods] into quarters[,]
- c. no evidence of ongoing attempts to secure new residence,
- d. rental property was a four bedroom house, and
- e. indefinite duration of remaining in those quarters per Mr. Ruerup's statement that he had to wait until sale of old residence before buying new residence.

### Discussion

By regulation, TQSE are "subsistence expenses incurred by an employee and/or his/her immediate family while occupying temporary quarters." 41 FTR 302-5.2 (2001). Temporary quarters are "lodging obtained for the purpose of temporary occupancy from a private or commercial source." Id. 302-5.1. Eligibility for TQSE is at an end whenever a transferred employee "and/or any member of [that employee's] immediate family occupies permanent residence quarters." Id. 302-5.108.

As we have commented before, where to draw the line between temporary and permanent "is a question which philosophers undoubtedly have pondered for ages. In a metaphysical sense, everything of man's making must be temporary, for it can never be truly permanent – but to call everything temporary would render the concept of permanence a nullity." Charles J. Robinson, GSBCA 13693-RELO, 97-1 BCA ¶ 28,692 (1996).

Applicable regulations establish a practical method for deciding whether an employee's quarters, upon his reporting to a new duty station, are, for purposes of TQSE eligibility, temporary or permanent. Each agency must decide "[w]ho will determine whether quarters were indeed temporary, if there is any doubt." 41 CFR 302-5.301(e). In making this determination, the responsible official should consider "factors such as the duration of the lease, movement of household effects into the quarters, the type of quarters, the employee's expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters." Id. 302-5.305; see also JTR (the Department of Defense's Joint Travel Regulations) C13205-B.6 (Nov. 1, 2001).

DFAS considered all of the prescribed factors in evaluating whether Mr. Ruerup's rented home was temporary or permanent quarters. Mr. Ruerup has persuaded us that the agency's analysis was faulty as to only one of the factors: although the family moved some of its household goods into the rented house, it left most of those goods in storage. While the decision to store the goods, so as to minimize costs of a future move, indicates an intention to leave this residence, it is the only evidence (aside from Mr. Ruerup's assertion) that the family planned to move elsewhere.

The Board has found in other cases that notwithstanding the existence of a lease of at least one year in length, quarters an agency deemed permanent were more properly considered temporary. In those cases, however, there was a great deal of evidence that the employee and his family were intent on moving from the dwelling in question. For example,

in Thomas P. Simon, GSBCA 00-1 BCA ¶ 30,792, the employee looked at hundreds of building lots and bought one on which to construct a house; and in Felicia D. DeJesus-Walters, GSBCA 15986-RELO (Feb. 24, 2003), the employee made "vigorous and sustained efforts" to sell two houses she owned and also contracted to purchase a home at her new duty station. Mr. Ruerup's situation is more like those where we agreed with the agency as to the permanence of quarters, such as Susan E. Clark, GSBCA 15983-RELO (Feb. 12, 2003), where "[t]he only indicium of [the employee's] intent to remain only temporarily was the absence of her [household goods]," and Keith E. Kuyper, GSBCA 15839-RELO, 02-2 BCA ¶ 31,983, where we commented that "[c]laimant'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."

We can well appreciate the Ruerups' reasons for renting a house large enough for their family, rather than staying in a hotel upon their arrival in Yuma. Neither the good sense of that decision, however, nor the care taken to document the modest expenses claimed by Mr. Ruerup as TQSE, can have any bearing on the determination of whether the house was temporary or permanent quarters.

Mr. Ruerup asks that if we deny his claim as to lodging, we still grant it as to meals. This we cannot do. Under the applicable regulations, one is either in temporary quarters, and therefore permitted to receive reimbursement for both lodging and meals, or in permanent quarters, and therefore permitted to receive reimbursement for neither. No half-way station exists.

#### Decision

The claim is denied.

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STEPHEN M. DANIELS  
Board Judge