

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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May 11, 2004

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GSBCA 16316-RELO

In the Matter of VANESSA G. OUTENREATH

Vanessa G. Outenreath, San Antonio, TX, Claimant.

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

**GOODMAN**, Board Judge.

Claimant, Venessa G. Outenreath, is a civilian employee of the Department of the Army. She has requested that this Board review the agency's denial of reimbursement of certain costs incurred during a permanent change of station (PCS).

## Factual Background

Claimant was issued PCS orders to transfer from Virginia to her new permanent duty station (PDS) in Texas in June 2003. The travel orders listed her spouse and daughter as authorized dependents. At the time claimant relocated from Virginia and reported for duty at her new duty station in Texas, her spouse was a federal employee stationed in Germany. He traveled from Germany at his expense to claimant's old PDS in Virginia. From July 13 to 17, 2003, he accompanied the claimant on a househunting trip (HHT) to her new PDS, where they jointly purchased a home, and occupied temporary quarters with her at her new PDS from July 17 to August 4, 2003. At that time, claimant's spouse was on a priority placement list for relocation to claimant's new PDS. Claimant sought reimbursement of her spouse's expenses for the HHT and temporary quarters subsistence expenses (TQSE) for the period between July 17 and August 4. The agency denied reimbursement on the basis that claimant's spouse was not a member of her household, as his PDS was Germany, he did not commute from the home that was purchased at claimant's new PDS in Texas, and the agency therefore erroneously deemed him as a claimant's dependent. Accordingly, the agency determined that claimant was not entitled to reimbursement for her spouse's expenses incurred for the HHT and in temporary quarters.

Claimant has requested that this Board review the agency's denial. She states that she and her spouse made a decision to purchase a home at her new PDS and that the home was purchased jointly. Claimant and her spouse both executed the contract of sale and the settlement documents. She notes that her spouse is on a priority placement list to be transferred from Germany to claimant's new PDS in Texas, and if that transfer occurs her spouse will not require a HHT or the need to stay in temporary quarters.

### Discussion

This case presents the issue of whether a relocated employee may be reimbursed the expenses for her spouse who accompanied her on her HHT and occupied temporary quarters with her when her spouse is also a federal employee with a different PDS and was not relocated.

The agency stated that its denial of reimbursement was based upon its determination that the travel orders erroneously authorized travel for claimant's spouse. The agency relies upon Joint Travel Regulations (JTR), Appendix A, which contains the following definition:

#### DEPENDENT/IMMEDIATE FAMILY.

Any of the following named members of an employee's household at the time the employee reports for duty at a new PDS . . .

A. employee's spouse;

B. children of the employee or employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. (NOTE: "Children" includes natural offspring; stepchildren; adopted children; grandchildren, legal minor wards or other dependent children who are under legal guardianship of the employee or employee's spouse; also, a child born and moved after the employee's effective date of transfer because of advance stage of pregnancy, or other reasons acceptable to the DoD component concerned, e.g., awaiting completion of the school year by other children (50 Comp. Gen. 220 (1970); 66 Id. 497 (1987));

JTR, Vol. II, Appendix A (July 2003).

In denying claimant's claim, the agency focused on the fact that claimant and her spouse lived apart at different locations and concluded that the spouse could not be a member of claimant's "household" pursuant to the above regulation. The agency asserts that the employee's spouse could not have been a member of the employee's household at the time the employee reported for duty at the new duty station because her spouse was permanently assigned to a PDS in Germany and did not commute from the home purchased in Texas to his PDS. Accordingly, the agency states that it is "of the opinion that he should not be authorized PCS expenses as the employee's dependant under the provisions of the JTR."

### The HHT Claim

With regard to the househunting trip, the pertinent provision of the JTR states:

A. HHT:

1. is a discretionary allowance, not an entitlement, that the authorizing/order-issuing official, not the employee, determines is necessary;  
....

4. may be authorized only for an employee and/or spouse.

B. Definitions

1. Househunting Trip.

A trip made by the employee and/or spouse to a new PDS locality to find permanent living quarters to rent or purchase.

JTR C4107.

This provision allows the agency to authorize a HHT for an employee and the employee's spouse. There is no requirement that the spouse be a dependent or member of the employee's household. A HHT is defined as a trip to the employee's new PDS to find permanent living quarters. In the instant case, claimant and her spouse made the trip to the claimant's new PDS to find permanent living quarters and purchased a home jointly. Even though claimant moved into the house and her spouse returned to his PDS, there is no requirement in the regulation that the spouse live in the permanent quarters with the employee at the new duty station. The agency properly authorized claimant's spouse to accomplish the HHT and claimant is entitled to reimbursement of her spouse's HHT expenses.

The TQSE Claim

The JTR reads in relevant part with regard to TQSE:

TQSE is a discretionary allowance, not an entitlement, which is intended to reimburse employees for reasonable subsistence expenses incurred when they and/or their dependents must occupy temporary quarters. TQSE must be authorized before temporary quarters are occupied and may not be approved for any days that have passed before TQSE is authorized (41 CFR §302-5.7). After a determination is made that TQSE is necessary, TQSE on an actual expense basis cannot be denied because the employee does not want fixed TQSE.

JTR C13105.

A. Temporary Quarters.

Temporary quarters are private or commercial lodgings occupied temporarily after a PCS is authorized.

B. Subsistence Expenses.

Subsistence expenses are the expenses of lodging, food and other necessities incurred while an employee and/or dependents occupy temporary quarters incident to a PCS.

JTR C13110.

As these provisions state, TQSE is for the employee and dependents. Dependents are defined as immediate family members and members of the household in the provision relied upon by the agency in denying the instant claim. In Marilyn Daterman, GSBCA 13686-RELO, 97-1 BCA ¶28,880, we addressed the issue of whether a spouse who lived apart from a relocated employee could be an immediate family member or member of the employee's household. While that case arose from the employee's claim for reimbursement of real estate expenses incurred in the sale of her home which she owned jointly with her spouse, the principles discussed in that case are applicable to the issue in the instant case.

In Daterman, the employee and spouse were living apart at the time of the employee's transfer, initially for reasons of career choice and also because of marital discord. They were not legally separated, although they divorced later. We held that under these circumstances, where the employee and spouse were living apart and ultimately divorced, absent a legal separation at a time of the employee's relocation, the spouse was considered to be an immediate family member and member of the employee's household. In so doing, we reviewed previous decisions of the General Accounting Office which required a legal separation prior to transfer or a demonstrated intent by the spouse to purchase a separate residence as a prerequisite to a determination that the spouse was not a member of the employee's household. Neither of these factors is present in the instant case. Instead, claimant and her spouse purchased a home jointly at claimant's new duty station and claimant's spouse exhibited an intent ultimately to live in that home, as he was attempting to accomplish a transfer to claimant's PDS. Under these circumstances, we find that claimant's spouse was a member of claimant's household at the time she reported for duty at her new duty station. The agency properly authorized reimbursement of TQSE for claimant's spouse.

Decision

The claim is granted. Claimant is entitled to reimbursement of expenses for her spouse for the HHT and TQSE.

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ALLAN H. GOODMAN  
Board Judge