

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 22, 2004

GSBCA 16390-RELO

In the Matter of JAMES S. HARTLEY

James S. Hartley, Mineral Wells, TX, Claimant.

Susan Reed, Manager, Relocation Services, Federal Aviation Administration, Oklahoma City, OK, appearing for Department of Transportation.

BORWICK, Board Judge.

We sustain the decision of the Federal Aviation Administration (FAA) denying claimant reimbursement of temporary quarters subsistence expenses (TQSE) for the period that claimant occupied his permanent residence under a short-term lease before closing on the purchase of that residence. The agency acted reasonably in determining that claimant intended to occupy the house permanently when he signed the lease.

Background

On or about July 31, 2003, the agency transferred claimant in the interest of the Government from Minneapolis, Minnesota, to Fort Worth, Texas, and authorized claimant reimbursement of TQSE. Claimant, his family, and his four dogs and eleven cats relocated to Mineral Wells, Texas, and entered temporary quarters in a motel.

Claimant stayed in temporary quarters from September 7 through September 18. During that time period, claimant secured a permanent residence, with closing to take place later. However, the motel, being concerned about the effect of claimant's managerie on the habitability of the motel, encouraged claimant and his family to vacate the premises.

Claimant, his family, and his animals did not have a place to stay, since the only commercial lodging facility in the area which took pets had asked claimant to vacate its establishment and the agency refused to pay for the boarding of claimant's pets. However, claimant knew that he would be closing on his house soon. Claimant's mortgage consultant suggested that claimant speak to the person from whom he was purchasing the house to see if he could rent it for the period before closing. The seller of the permanent residence agreed

and entered into a lease for claimant's occupancy from September 19 through October 2 -- until he closed on the house.¹

Claimant submitted a voucher claiming TQSE for the period September 17 through October 2, 2003, including the period from September 19 through October 2, when claimant rented his permanent quarters from the seller. According to claimant, the total TQSE for that period amounted to \$2041.23 -- i.e., \$1134 for the house rental, \$831.73 for meals and \$75.50 for laundry and dry cleaning.

On December 4, 2003, the agency denied reimbursement of TQSE for the period September 19 through October 2, because "temporary quarters cannot be claimed on property subsequently purchased as a permanent residence." On March 14, 2004, claimant submitted a claim to the Board contesting that denial.

Discussion

Since October 15, 1998, the FAA Travel Policy (FAATP), not the Federal Travel Regulation (FTR), has defined the travel and relocation entitlements for FAA employees. Alan D. Hendry, GSBCA 15585-RELO, 01-2 BCA ¶ 31,535. The FAATP defines temporary quarters as lodging obtained for the purposes of temporary occupancy from a private or commercial source. FAATP 302-1.20. The FAATP also 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; Keith E. Kuyper, GSBCA 15839-RELO, 02-2 BCA ¶ 31,983. We review whether an agency's decision that an employee occupied premises permanently, rather than temporarily, is reasonable. Charles F. Ruerup, GSBCA 15955-RELO, 03-1 BCA ¶ 32,227; Kuyper, 02-2 BCA at 158,081 (citing Steven F. Bushey, GSBCA 15289-RELO, 01-1 BCA ¶ 31,291 (construing analogous provisions of the FTR)).

Here, the agency decision that commencing on September 19 claimant intended to permanently occupy the house he was to purchase a short time later was clearly reasonable. See Shane C. Jones, GSBCA 15462-RELO, 01-1 BCA ¶ 31,405 (and cases cited therein). Claimant admits that he had nowhere else to go and that his intent was to occupy the house on September 19 and stay there through the house closing.

Finally, claimant says he was "unaware and uninformed by the [agency] that I could not rent the house I intended to buy until closing." Of course, the agency did not preclude claimant from renting the house. It merely denied reimbursement for rent he paid, in accordance with the FAATP. Claimant is charged with knowledge of the rules. Jeffrey L. Troy, GSBCA 16072-RELO, 03-2 BCA ¶ 32,329.

¹ The seller of the residence was a kindred spirit with claimant in her love of animals. She possessed horses, sheep, and a donkey that claimant agreed to feed for the duration of the short-term lease.

The Board denies the claim.

ANTHONY S. BORWICK
Board Judge