

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 10, 2005

GSBCA 16445-RELO

In the Matter of V. DIANE RHODES

V. Diane Rhodes, Reston, VA, Claimant.

Jacqueline Lynch, Chief, Travel Management Section, United States Geological Survey, Reston, VA, appearing for Department of the Interior.

HYATT, Board Judge.

Claimant, V. Diane Rhodes, an employee of the United States Geological Survey (USGS), was relocated from the Atlanta, Georgia area to Reston, Virginia. She has asked the Board to review her relocation entitlements, which were initially denied by the agency, and subsequently, to some extent, restored.

Ms. Rhodes transferred in May 2002 to accept a position as Fiscal Specialist with the Eastern Region's Office of Fiscal Services. The job announcement stated that relocation expenses would be paid. At the time of her transfer, however, Ms. Rhodes was informed that the hiring office could not afford to pay for her relocation. She was told that the agency would pay for a house hunting trip but could not afford to compensate her for other costs, such as the shipment and temporary storage of her household goods, occupancy of temporary quarters and real estate expenses. Since she considered the transfer to be important for her future career growth within the agency, she agreed to these conditions and signed a form waiving the opportunity to use the services of a relocation contractor.

Nearly a year after she reported to duty, the agency determined that Ms. Rhodes was in fact entitled to relocation benefits in connection with her transfer. A travel authorization, dated July 1, 2003, was issued, identifying various costs for which Ms. Rhodes would be reimbursed. An amendment to Ms. Rhodes' travel authorization, signed on August 11, 2003, included the following statements:

Employee reported to new duty station on July 14, 2002. Employee agreement signed on May 29, 2002. Dependents: Spouse- . . . , Child- Travel and transportation of employee and family. Employee

entitlements: Miscellaneous moving expense allowance. Temporary quarters employee: NTE [not to exceed] 3 days. Real estate: Sale and Purchase of Home. [Transportation of h]ousehold goods was paid by spouse military service therefore no temporary storage authorized. House hunting trip previously authorized [under original travel authorization].

For mode of travel, the amended authorization approved common carrier and one privately owned vehicle.

Ms. Rhodes took a seven-day house hunting trip, the costs of which were reimbursed by the agency at the time of her transfer. The bulk of her household goods were moved by the military based on an entitlement due to her spouse. The remaining household goods were moved in a truck rented by claimant. The military move did not include temporary storage of household goods, although Ms. Rhodes incurred costs for temporary storage. At this point, Ms. Rhodes wants to know what, if any, amounts she is entitled to for temporary quarters for herself, her spouse, and her son; transportation and per diem expenses for her spouse, who traveled separately to the new duty station; and temporary storage of household goods. She also believes she should be granted an extension of time for claiming expenses in connection with the purchase of a home at the new duty station.

In response to Ms. Rhodes' request, the agency states that it now recognizes that it should have paid Ms. Rhodes those relocation benefits that are required by law to be provided when an employee relocates in the interest of the Government. In addition to the house hunting trip expenses, USGS has paid claimant's cost of moving a small load of household goods using a rented truck, expenses associated with the sale of her house in Georgia, and claimant's cost of traveling with her son, by privately owned vehicle, to report for duty. With respect to the remaining expenses claimed by Ms. Rhodes, USGS maintains that these requests relate to discretionary entitlements that the gaining office does not want to authorize.

Discussion

When an employee is transferred in the interest of the Government from one official duty station to another for permanent duty, the Government is required to pay for certain relocation expenses and it may, if it chooses, pay for other relocation expenses. George F. Ringrose, GSBCA 15899-RELO, 02-2 BCA ¶ 32,032. Among the expenses that the Government is required to pay are those for transportation and per diem for the employee and his or her dependents, shipment and temporary storage of household goods, miscellaneous costs, and real estate transactions. 5 U.S.C. §§ 5724, 5724a (2000). In this case, the agency has already recognized that Ms. Rhodes was entitled to appropriate relocation benefits and that it was not permitted to deny her those benefits solely on the basis of budget constraints. See Leslie A. Jones, GSBCA 16347-RELO, 04-1 BCA ¶ 32,585 (lack of funds does not justify denial of relocation benefits when employees are transferred in the interest of the Government). The agency further states that it is working diligently to avoid the provision of misinformation and lack of counseling in future relocations. With respect to the subject claim, however, USGS believes that all or most of the mandatory benefits due Ms. Rhodes

for this relocation have been paid, and that the remaining expenses we are asked to consider concern discretionary benefits which it is not required to pay.

Ms. Rhodes has asked us to determine what, if any, additional amounts she is entitled to for (1) temporary quarters for herself, her spouse, and her son, (2) transportation and per diem expenses for her spouse, who traveled separately to the new duty station, and (3) temporary storage of household goods. She also wants to know if she is entitled to an extension of time for claiming expenses in connection with the purchase of a home at the new duty station. We address each issue in turn.

Temporary Quarters Subsistence Expenses

With respect to temporary quarters subsistence expenses (TQSE), Ms. Rhodes, upon learning she would receive relocation benefits, initially submitted a voucher for thirty days of TQSE at the fixed amount. She then submitted a voucher for twenty days, after deducting the house hunting trip, for which she had been authorized ten days. Eventually, when it issued and amended her travel authorization for the relocation, USGS limited claimant's TQSE benefit to a total of ten days, from which it subtracted her seven-day house hunting trip, for which she had already been reimbursed. The agency then determined it could not pay her for the remaining three days because of a lack of receipts.

In addressing this aspect of Ms. Rhodes' claim, USGS advises that the gaining office determined that it would authorize only ten days of TQSE, and that this would be offset by the seven-day house hunting trip, leaving a total of three days to be reimbursed at the fixed amount. The issue presented to us appears to be how many days of fixed amount TQSE should be authorized.

USGS points out that under the Federal Travel Regulation (FTR), TQSE is a discretionary entitlement and, if an agency decides to grant it, the agency may limit the number of days permitted as it deems appropriate and may reduce TQSE benefits to reflect any house hunting trip taken by the employee. The agency's preference is to limit relocating employees to the expense of a house hunting trip if possible, and, in any event, to reduce TQSE if a house hunting trip is taken. In this case, the agency explains, it determined that Ms. Rhodes could be reimbursed at the fixed amount after the fact, as she apparently would like the agency to permit, but only for the amount of time she actually spent in TQSE and only for the total of ten days that it was willing to authorize.¹ Although it is not entirely clear what the agency intended to authorize, it does appear that the agency's request for lodging receipts was intended to verify that she actually occupied temporary lodging.

With respect to a grant of TQSE for eligible employees, the FTR states that each agency should establish policies and procedures governing when TQSE will be authorized, who will determine if it is appropriate in each situation, if and when the fixed amount option

¹ In Richard J. Anderson, GSBCA 15870-RELO, 02-2 BCA ¶ 31,999, modified on other grounds, 03-1 BCA ¶ 32,149 (2002), the Board held that an agency may modify travel orders to allow the election of the fixed amount option TQSE after the fact when the option was not made known to the employee at the time he or she relocated.

will be authorized, who will determine the appropriate period of time for which TQSE will be authorized, and who will determine whether the quarters were in fact temporary if there is any doubt. 41 CFR 302-6.301 (2002). In its "Employee's Guide for Permanent Change of Station" (USGS Guide), chapter VI, the USGS sets forth its internal guidelines and policies applicable to discretionary benefits available for relocating employees, including the authorization of TQSE. These guidelines reflect an overall preference for limiting, or avoiding altogether, the need for TQSE by authorization of a house hunting trip. In addition, the policy provides that the employee may elect either actual expense or fixed amount reimbursement. The latter option provides for reimbursement of temporary quarters expenses for a period of up to thirty days.

Here, USGS has approved the fixed amount option for TQSE, but limited the benefit to a total of ten days, including the house hunting trip. In Richard J. Anderson, GSBCA 15870-RELO, 02-2 BCA ¶ 31,999, modified on other grounds, 03-1 BCA ¶ 32,149 (2002), the Board recognized that the wording of the FTR, which permits agencies to authorize the fixed amount method for up to thirty days, meant that the agency does not have to authorize the full thirty days. Although Ms. Rhodes believes that under the circumstances she should be afforded the full thirty days, the agency has exercised its discretion to limit her recovery under this method, explaining that its decision reflects the general policy followed for relocations. This exercise of discretion was not arbitrary or capricious, and was therefore permissible. It appears from the agency response that the three days authorized have been paid.

Transportation Cost of Second Vehicle

The next issue claimant raises concerns her entitlement to be reimbursed for the transportation costs incurred by her spouse in traveling to the new duty station. Specifically, Ms. Rhodes maintains that the agency should reimburse her spouse, who traveled to the new duty station separately at a later date, for the mileage costs of driving a second privately owned vehicle to the new duty station. The agency did not authorize this and thus denied the request.

The USGS Guide, chapter V, states that the employee and members of the immediate family may travel to the new permanent duty station either by privately owned vehicle or common carrier. The use of more than one privately owned vehicle may be justified as advantageous to the Government under special circumstances. According to the guideline, one of the special circumstances that justifies approval of the use of a second vehicle occurs when a family member must delay travel for reasons such as the sale of property and settlement of personal business at the former duty station. Ms. Rhodes has explained that her spouse remained in Atlanta for these purposes. USGS has not addressed why, under its stated policy, this does not meet the criteria for permitting and reimbursing travel with a second privately owned vehicle. If USGS has a basis for concluding that the exception stated in its guidelines should not apply here, it should provide an explanation to claimant. Otherwise, it appears that the policy allows for the use of a second privately owned vehicle.

Temporary Storage of Household Goods

The confusion about this benefit is rooted in the fact that the majority of claimant's household goods were moved under a Government bill of lading (GBL) issued by the Department of Defense based on an entitlement due to claimant's spouse. Ms. Rhodes has explained that her spouse's move with DoD did not include reimbursement of the cost of temporarily storing household goods. USGS tells us that it ordinarily handles temporary storage through the GBL process, which it did not initiate in this case. Thus, USGS is not clear as to (1) whether it has authority to pay for temporary storage of household goods when it did not pay the expenses of transporting the household goods to the new permanent duty station and (2) whether it is obligated to reimburse the expenses in this situation.

Under the applicable regulations, as an employee transferring in the interest of the Government, Ms. Rhodes was entitled to reimbursement of the cost of up to ninety days of temporary storage of her household goods in connection with her relocation. 41 CFR 302-7.8. Nothing in the FTR suggests that this benefit is inextricably combined with the transportation of the household goods to the new duty station, although in practice it is no doubt likely that the two benefits are frequently handled under a single GBL when that method of transportation of household goods is selected. The circumstances here, however, do not present any impediment to the payment of this benefit -- assuming Ms. Rhodes can document the weight of, and cost incurred to store, her household goods for up to the ninety days provided under regulation. Thus, the answer to USGS's question is that it has both the authority and obligation to pay these expenses upon the presentation of appropriate proof that the costs were actually and reasonably incurred.

Extension of Time to Purchase a Residence

Ms. Rhodes also requests that she be granted an extension of the time limitation for purchasing a new residence following her change of station. She notes that she was not aware of her entitlement to real estate transaction expenses in connection with such a purchase until a year after her transfer.

The FTR provides that the settlement dates for the sale and purchase of residences for which reimbursement is requested must occur not later than two years after the date on which the employee reported for duty at the new location. 41 CFR 302-11.21. The agency is authorized to extend this date for up to two years for reasons that are beyond the employee's control and acceptable to the agency. *Id.* 302-11.22. The USGS policy provides that an employee may request such an extension and that the extension may be authorized in accordance with its delegation of travel authority document, SM 205.2. This document provides that the authority to approve such an extension rests with Office Chiefs reporting to the agency's Director/Deputy Director and with managers and supervisors who report directly to a Senior Executive Service manager or an Office of Regional Services Chief.

Ms. Rhodes has submitted with her claim a copy of a memorandum authored by her, requesting a one-year extension of the time to purchase and proceed to settlement on a new home in the area of her present permanent duty station. Her request has been approved by her present supervisor and by the Chief, Office of Fiscal Services. Thus, it would appear that, in accordance with the agency's policy, the extension has been appropriately approved. In these circumstances, the funding office is not within its rights to overrule the designated authorizing official's exercise of discretion. See, e.g., Marvin R. McGee, GSBCA

15829-RELO, 02-2 BCA ¶ 32,002; John E. Joneikis, GSBCA 15455-RELO, 01-2 BCA ¶ 31,514.

Decision

Claimant is entitled to receive additional relocation benefits as provided above.

CATHERINE B. HYATT
Board Judge