

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 8, 2005

GSBCA 16646-RELO

In the Matter of J. D. JAMAR, JR.

J. D. Jamar, Jr., Biloxi, MS, Claimant.

Rick Miller, Travel and Overseas Allowances Program Policy Manager, Force Sustainment Division, Office of the Chief of Staff, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

DANIELS, Board Judge (Chairman).

The Air Force transferred J. D. Jamar, Jr., from Sheppard Air Force Base, Texas, to Keesler Air Force Base, Mississippi, in September 2003. In so doing, the agency authorized payment to Mr. Jamar of actually-incurred temporary quarters subsistence expenses (TQSE) for a period of sixty days. The employee asked that his period of eligibility for TQSE be extended for an additional sixty days. The issue posed in this case is whether the period should be extended for an additional thirty days, as allowed by the Air Force, or the full sixty-day period, as sought by Mr. Jamar.

Background

Mr. Jamar contends that his eligibility should extend for an additional sixty days (making the period 120 days in all) because he was unable to find suitable, affordable housing in the area of his new duty station. His family remained in temporary quarters for more than six months while a new house was being built for them.

The family is described by Mr. Jamar as “blended,” meaning that it contains children from two different prior families. It consists of him, his wife, and their five daughters, aged eleven through fifteen at the time of the move. To find permanent housing for this group, Mr. Jamar and his wife looked for a four- or five-bedroom house within a price range they could afford. They began their search on a househunting trip to Mississippi in August 2003 and continued it as soon as they arrived in that state after the transfer in September. A realtor confirms in a long, well-documented letter, that the Jamars looked at a large number of existing homes, but could not find any that were sufficiently large, affordably priced, and within a reasonable distance of both schools and Mr. Jamar’s duty station. Eventually, the Jamars determined that having a new home constructed was the only viable option open to them for housing.

Discussion

A TQSE allowance “is intended to reimburse [a transferred] employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters.” 41 CFR 302-6.3 (2003). Whether to authorize TQSE to a relocating employee is a determination which is wholly within the discretion of the agency involved. 5 U.S.C. § 5724a(c)(1) (2000); 41 CFR 302-6.6; JTR C13105, C13200, C13300. Similarly, when the actual expense method of reimbursement of TQSE is elected, whether to extend the period of eligibility for reimbursement of TQSE beyond sixty days (up to a total of 120 days) is also a decision which is within the discretion of the agency. 5 U.S.C. § 5724a(c)(2); 41 CFR 302-6.104; JTR C13210-B.

The Federal Travel Regulation (FTR) and the Department of Defense’s Joint Travel Regulations (JTR) both permit the agency to extend the period of eligibility for reimbursement of actual expense TQSE beyond sixty days if the agency determines that there is a compelling reason for the employee to continue occupying temporary quarters. The compelling reason must be beyond the employee’s control and acceptable to the agency. 41 CFR 302-6.104, -6.105; JTR C13210-B.1. The agency has considerable discretion here; its determination will be upheld unless we find that determination to have been arbitrary, capricious, or contrary to law. *Marvin R. McGee*, GSBCA 15829-RELO, 02-2 BCA ¶ 32,002; *Vanessa A. Deal*, GSBCA 15481-RELO, 01-1 BCA ¶ 31,407; *Rifat A. Ajjuri*, GSBCA 14506-RELO, 98-2 BCA ¶ 29,788.

One of the examples of circumstances which might qualify as sufficient justification for extending the TQSE eligibility period is, “[The employee] is unable to locate a permanent residence which is adequate for [his] family’s needs because of housing conditions at [his] new official station.” 41 CFR 302-6.105(c); *see also* JTR C13210-B.1.c. The Air Force considered this example when it reviewed Mr. Jamar’s request for an extension of TQSE

eligibility. Indeed, the agency considered it three different times, making a different analysis on each occasion.

The first agency review of the request occurred at the command level. The command for which Mr. Jamar works decided that because there was no shortage of adequate housing in the area of the employee's duty station, the request had to be denied. Mr. Jamar's desire for an affordable residence with four or more bedrooms was viewed by the command as a matter of personal preference, something within the control of the employee.

The second agency review occurred at headquarters, after Mr. Jamar had appealed the command's decision. Headquarters personnel properly understood that even if housing was abundant near the employee's duty station, that did not mean that housing adequate to the needs of Mr. Jamar's family was abundant. A four-bedroom house that the family could afford was reasonably considered to be appropriate for their needs. Headquarters personnel learned from the Mississippi Association of Realtors and the Mississippi Gulf Coast Multiple Listing Service that during the first four months Mr. Jamar worked at Keesler Air Force Base, only five houses (other than those under construction) of appropriate size and in the family's price range were available within thirty miles of the base. This investigation confirmed the realtor's analysis that Mr. Jamar had presented. The limited availability of adequate housing was considered a factor beyond the employee's control which justified an additional period of TQSE.

Headquarters did not grant the full sixty days requested, however, because of a belief that Mr. Jamar had not taken a househunting trip prior to his transfer. If the employee had taken such a trip, headquarters explained, he could have looked for housing before his family moved to Mississippi and learned earlier than he actually did that having a new home constructed was the only viable option for housing at the duty station. This would have reduced the time in which the family had to remain in temporary quarters. Therefore, headquarters concluded, an additional thirty days, rather than sixty, was appropriate.

The third agency review occurred at headquarters, as well, after Mr. Jamar had filed this case with the Board. While holding to the position that the employee is entitled to an additional thirty days of eligibility for TQSE, agency headquarters has most recently undercut the bases on which it allowed this time. It now says that there was no lack of adequate housing at the new duty station, for houses suitable for a large family were available and Mr. Jamar's decision not to purchase one because of cost or location was a matter of personal preference. The agency also acknowledges that Mr. Jamar did take a ten-day househunting trip before moving to Mississippi.

Each agency analysis is problematic. The first review improperly construed the applicable regulations by assessing the reasonableness of the family's remaining in temporary housing against a standard of adequate housing in general, rather than adequate housing for the family's needs. This review also ignored the concept that affordability must be considered in determining whether housing is available. We view that concept as necessarily implicit in the regulations, for housing whose cost is beyond a family's means is unavailable to that family. The second review corrected these errors of the first analysis. This review appears rational on its face, in that it limits additional TQSE, notwithstanding the lack of affordable housing adequate to the family's needs, because Mr. Jamar failed to mitigate the impact of that difficulty by taking a househunting trip prior to transferring. *See Ajjuri*. The third review, however, by acknowledging that the employee *did* take a househunting trip, invalidates the second analysis' reason for limiting the extension of the TQSE eligibility period. The only justification cited in this review for limiting the extension is that housing adequate for the family was available in the area of the duty station at the time they moved. This reason, however, is demonstrated to be unfounded by both the realtor's presentation and the agency's own excellent research (as explained in the second analysis).

We are left with the distinct impression that the agency's determination to allow Mr. Jamar thirty additional days of TQSE, rather than sixty, is arbitrary and capricious. We therefore grant the claim, directing the Air Force to reimburse Mr. Jamar for a total of 120 days of TQSE.

STEPHEN M. DANIELS
Board Judge