

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

---

November 12, 1998

---

GSBCA 14592-RELO

In the Matter of BRENDA BYLES

Brenda Byles, El Reno, OK, Claimant.

Jeanne DiGange, Certification and Disbursement Section, National Finance Center, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

**HYATT**, Board Judge.

Pursuant to 31 U.S.C. § 3529 (Supp. II 1996), the Department of Agriculture (USDA) has requested a decision as to whether it may reimburse claimant, Brenda Byles, for thirty-three days of temporary quarters subsistence expenses (TQSE). Ms. Byles was authorized a permanent change of station (PCS) from Durant, Oklahoma to El Reno, Oklahoma under travel orders dated May 14, 1996. These orders authorized reimbursement of TQSE and real estate expenses.

On June 25, 1996, Ms. Byles contacted a realtor in El Reno to assist in locating suitable temporary quarters. Claimant was unable to use motel-type accommodations because her daughter, who is severely handicapped, requires certain equipment to meet her medical needs. This equipment is too cumbersome for use in a motel environment. The realtor informed Ms. Byles of a residence in El Reno that was for sale, or alternatively, for rent on a short-term basis. On July 27, 1996, Ms. Byles signed a lease to rent the house for one month from August 15 to September 15, 1996. Ms. Byles had her household goods delivered to this location primarily because she needed uninterrupted access to her daughter's medical equipment. On September 23, 1996, Ms. Byles signed an agreement to purchase the house she had rented.

Upon receipt of a voucher seeking reimbursement of TQSE for the period when the house was occupied under the lease, USDA's National Finance Center rejected the claim because Ms. Byles subsequently purchased the residence occupied for temporary quarters. The disallowance of TQSE cited Federal Travel Regulation (FTR) 302.5-2(c), which provides that expenses of temporary quarters in a residence that eventually becomes an employee's permanent residence may only be reimbursed if, in the agency's judgment, the

employee has satisfactorily demonstrated that the quarters were initially intended to be temporary. Ms. Byles requested that the disallowance of TQSE be reconsidered.

In support of her request, Ms. Byles, in a letter dated January 24, 1997, elaborates on the circumstances of her rental and subsequent purchase of the house. She explains that as a result of the relocation to El Reno of most of the employees of USDA's Durant facility, which was closing, the availability of suitable housing in the El Reno area was severely limited. Ms. Byles had not intended to purchase a house because she did not expect that she could afford one; she had rented an apartment in Durant and intended to continue to rent in El Reno. When the realtor located a house that the owners were willing to rent until it sold, she "moved into it temporarily, knowing it could be sold out from under" her. A letter from the realtor corroborates claimant's statement that she was looking for rental properties for her permanent residence and that she entered into this short-term lease expecting her occupancy to be temporary since the house was still for sale. Claimant continued to look for suitable rental housing for permanent quarters, and only after moving to El Reno decided to try to purchase this house because of her inability to locate an alternative rental property. The agency points out that there is no corroboration of the continued efforts to locate alternative rental housing.

#### Discussion

The USDA has asked if, in light of the extenuating circumstances described by Ms. Byles, she may be paid for her temporary quarters expenses for the period of time she rented the house she bought. Given the information provided by Ms. Byles and other supporting documents in the record, the Board's opinion is that the agency may properly determine that the TQSE expenses are reimbursable.

When an employee is transferred in the interest of the Government from one permanent duty station to another, the agency will pay subsistence expenses that the employee incurs while occupying temporary quarters, provided certain requirements are met. 5 U.S.C. § 5724a(a)(3) (1994); 41 CFR 302-5 (1996). Under the applicable regulation, quarters are deemed to be temporary if they are obtained from either private or commercial sources, for the purpose of temporary occupancy after the employee vacates the residence that was occupied when the agency authorized the transfer. 41 CFR 302-5.2(c). If the employee occupies quarters that eventually become permanent quarters, the agency may still reimburse the employee for TQSE if, in the agency's judgment, the employee makes a satisfactory showing that he or she intended initially to occupy the quarters only on a temporary basis. In making this judgment, the regulation advises the agency to consider the duration of any lease, the type of quarters, any expressions of intent by the employee, the employee's attempts to find permanent quarters, and the length of time the employee occupied the quarters. The Board has recognized that the principal consideration is the intention of the employee at the time the living arrangement was entered into. Kim R. Klotz, GSBCA 13648-RELO, 97-1 BCA ¶ 28,789; see also Patricia H. Songer, B-260380 (June 10, 1996); Robert D. Hawks, B-205057 (Feb. 24, 1982).<sup>1</sup>

---

<sup>1</sup>Generally, when an employee undertakes to rent a house at the same time he or she has arranged to purchase it, the period for which the house is rented cannot be regarded as

Based on the information available in the record, Ms. Byles has presented a persuasive case in support of her claim for reimbursement of her temporary quarters expenses. The record establishes that claimant entered into the initial lease for a one month period and had not, at that time, agreed to buy the house. She needed to rent a house or apartment to accommodate her daughter's special medical equipment -- the record supports the conclusion that this house was one of the few, if not the only, options available to her for temporary occupancy. After moving her daughter to the house, claimant continued to look for rental properties in the belief that she would not qualify to purchase a house. Upon realizing that the shortage of rental properties could continue for some time to come, and that a second move for her daughter would be inadvisable, claimant looked into the possibility of buying the house. In spite of some ambiguity in Ms. Byles' initial letter seeking reconsideration of the disallowance of her claim,<sup>2</sup> the facts in the record strongly support the conclusion that claimant's initial occupancy of quarters that eventually became her permanent quarters was intended to be temporary. As such, the regulation permits reimbursement of TQSE for the period claimed and, if the amount claimed is otherwise acceptable, the agency may pay claimant this amount.

---

CATHERINE B. HYATT  
Board Judge

---

temporary occupancy and TQSE may not be paid for that period. E.g., Ronald W. Martineau, GSBCA 14157-RELO, 97-2 BCA ¶ 29,298.

<sup>2</sup>In an undated, handwritten letter, Ms. Byles explains that she rented and then purchased the house because the move from Durant to El Reno had been extremely traumatic for her handicapped daughter and she feared a second move would be "too much for her." This letter somewhat ambiguously suggests that claimant arranged to lease for a short period the house she intended to buy to avoid the stress of moving her daughter a second time. Given the strong evidence showing that Ms. Byles did not initially intend to purchase the house, we view this wording as inartful, rather than as a concession that claimant had intended to buy the house for permanent occupancy at the outset.