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

April 9, 2001

GSBCA 15462-RELO

In the Matter of SHANE C. JONES

Shane C. Jones, Elkins, WV, Claimant.

Deborah Dennis and Cathy Rios, National Business Center, Department of the Interior, Denver, CO, appearing for Department of the Interior.

DANIELS, Board Judge (Chairman).

When do an employee's residence quarters at his new duty station become permanent, such that the employee's eligibility for temporary quarters subsistence expenses (TQSE) ends? This is the question raised in a case filed by Shane C. Jones, a biologist with the Department of the Interior's United States Fish and Wildlife Service.

Mr. Jones was transferred to the West Virginia Field Office of the Service in December 1999. After living first with relatives and then in a hotel, Mr. Jones and his wife decided to move into a rented house or apartment until they found permanent quarters. During the month of January 2000, the Joneses located an apartment within a duplex dwelling which they considered the only residence in the area that met their needs and was affordable. On January 30, they signed separate contracts for a month-to-month rental of the apartment and the purchase of the entire building. The Joneses moved into the apartment on February 1 and settled on the purchase on February 29. Their belongings were delivered to them on March 4. The Joneses continue to live in the apartment and now consider it their permanent residence.

Mr. Jones claimed TQSE for the period ending on February 28, the day before he and his wife purchased the building in which their apartment is located. The Fish and Wildlife Service allowed TQSE only until January 31, the day before the family moved into the apartment.

Reimbursement of TQSE is available to employees while they and/or members of their immediate families are occupying temporary quarters in conjunction with a transfer of official station. 41 CFR 302-5.2 (1999); see also 5 U.S.C. § 5724a(c) (Supp. V 1999). The Federal Travel Regulation (FTR) defines the term "temporary quarters" as "lodging obtained

for the purpose of temporary occupancy from a private or commercial source." 41 CFR 302-5.1. The FTR says that when an employee and/or a member of his immediate family moves into permanent residence quarters while authorized to receive TQSE, the period of eligibility ends at midnight of the preceding day. Id. 302-5.108.

The FTR contains guidance as to the demarcation between temporary and permanent residence for the purpose of determining TQSE eligibility. The regulation tells employees, "If your temporary quarters become your permanent residence quarters, you may receive a TQSE allowance only if you show in a manner satisfactory to your agency that you initially intended to occupy the quarters temporarily." Id. 302-5.14. The regulation directs agencies, "In determining whether quarters are 'temporary', you should consider factors such as the duration of the lease, movement of household effects into the quarters, the type of quarters, the employee's expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters." Id. 302-5.305.

In attempting to apply these rules, Mr. Jones maintains that the apartment was his temporary residence until he actually purchased the duplex, for the following reasons: he and his wife had an initial intention, in looking for a residence, of occupying an apartment temporarily and purchasing a home later; the lease they signed was on a month-to-month basis; they had access to only half of the duplex until purchase occurred; and their belongings were not delivered until after they had bought the building. The Fish and Wildlife Service responds simply that the fact that the lease and purchase contracts were signed on the same day demonstrates that the employee's intention, upon moving into the apartment, was to remain there permanently.

To support its position, the agency has done an excellent job of legal research and analysis, finding past Board decisions regarding similar situations and showing how they apply to Mr. Jones's circumstances. As these decisions demonstrate, when a federal employee who has been transferred to a new duty station locates quarters in which he wishes to reside and arranges to rent those quarters until he can purchase them, the Board has consistently affirmed agency decisions which consider those quarters to have been permanent from the moment the employee moves into them. In Masood Badizadegan, GSBCA 14393-RELO, 98-2 BCA ¶ 29,789, for example, we concluded, "The FTR simply does not permit payment of TQSE in these circumstances." In Ricard Lopez Wilson, GSBCA 14923-RELO, 99-1 BCA ¶ 30,357, we explained, "The manner in which [the employee] paid for occupancy of his permanent residence, by renting temporarily, is irrelevant." Nancy J. Scheid, GSBCA 14392-RELO, 98-1 BCA ¶ 29,698, and Ronald W. Martineau, GSBCA 14157-RELO, 97-2 BCA ¶ 29,298, are to like effect.

The indicia of temporariness asserted by Mr. Jones do not successfully distinguish his situation from those in the cases cited by the agency. That this employee and his wife originally intended to rent quarters until they found a permanent residence is not important to our inquiry, since we are concerned with their intention beginning on the day on which they moved into the apartment, not previously. We agree with the agency that the signing of lease and purchase contracts on the same date manifests an intention to remain in the apartment indefinitely after moving in. The fact that a lease is on a month-to-month basis is often an indication that quarters are being occupied temporarily. E.g., Leahrae Rudolph, GSBCA 15424-RELO (Feb. 7, 2001). Here, however, the way in which the lease was styled

is not critical; the duration of the lease period was clearly to be from the time the Joneses moved into the apartment until they bought the entire duplex.

Nor does the Joneses' access to the other apartment in the building have any bearing on the permanence of the couple's stay in their own apartment prior to the purchase. Finally, an employee's residence in a dwelling he owns may be considered temporary where a lack of household goods makes the premises far less than fully inhabitable. E.g., Gerald Taylor, GSBCA 15251-RELO, 00-2 BCA ¶ 31,016; Thomas R. Montgomery, GSBCA 14888-RELO, 99-2 BCA ¶ 30,427. The fact that the Joneses lived in their apartment without complaint until all their belongings had been delivered shows, however, that the place was very much inhabitable throughout the rental period (and, for that matter, during the first days of their ownership of the building).

We deny the claim.

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STEPHEN M. DANIELS
Board Judge