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

July 12, 2001

GSBCA 15569-RELO

In the Matter of INGOLF C. HACK

Ingolf C. Hack, Hopatcong, NJ, Claimant; and Lawrence Burger, Chief Counsel, Federal Law Enforcement Officers Association, Garden City, NY, appearing for Claimant.

Eliot Van Velzen, Chief, Travel Section, National Finance Center, United States Customs Service, Indianapolis, IN, appearing for Department of the Treasury.

BORWICK, Board Judge.

In this matter, claimant, Ingolf C. Hack, contests the determination of the Department of the Treasury, United States Customs Service, that claimant's period of allowable temporary quarters subsistence expense (TQSE) ended when he and his family moved from temporary quarters into permanent quarters earlier than he and his family had intended. We sustain the decision of the agency, which correctly applied the governing provisions of the Federal Travel Regulation (FTR).

The facts indicated by the record are as follows. On or about August 12, 2000, the agency authorized claimant a permanent change of station (PCS) move in the interest of the Government from San Juan, Puerto Rico, to Newark, New Jersey. The agency authorized claimant's reimbursement of expenses for a ten-day house hunting trip and fifty days of reimbursement of TQSE. According to invoices of Days Inn, claimant or his family commenced living in temporary quarters on August 23. On August 25, claimant entered into a contract for the purchase of a residence in Hopatcong, New Jersey.

Claimant states that soon after his spouse's initial check-in, the motel's management informed his spouse that the motel was booked solid for the weekend of September 15 through September 18. Claimant states that they were unable to secure other temporary quarters for that period, so they made arrangements with the then-owners of the Hopatcong house to rent the house from September 10 through the closing date or through September 30.

Claimant's family checked out of the Days Inn on September 10 and moved permanently into the Hopatcong house. Claimant states that there were no major applicances in the house so claimant's family could not take meals there. Claimant states that the house

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was unfurnished, so claimant rented furniture on a short-term basis. Claimant's furniture was delivered on October 16, with the rental furniture being returned the next day.

Claimant considered that his TQSE period ran from August 23 through October 15 and submitted expense vouchers seeking TQSE reimbursement for that period. The agency, upon examining the vouchers, determined that claimant's allowable period for reimbursement of TQSE expenses commenced on August 23 and ended on September 10, when claimant's family left the Days Inn and moved into the Hopatcong house. Claimant used his travel advance for some TQSE reimbursement beyond September 10, and the agency established a debt to recoup the overpayment. Claimant appealed the agency's determination to this Board.

The pertinent provision of the FTR provides that the period of eligibility for reimbursement ends at midnight on the earlier of (a) the day preceding the day the employee or any member of the employees immediate family occupies permanent residence quarters or (b) the day the employee's authorized period for claiming actual TQSE expenses expires. 41 CFR 302-5.108 (2000). When a transferred federal employee finds a permanent residence and continuously rents that residence until he or she can purchase it, the Board has consistently affirmed agency decisions which consider the residence permanent the moment claimant moves into it. Shane C. Jones, GSBCA 15462-RELO (Apr. 19, 2001); Glenn Baker, GSBCA 14221-RELO, 98-2 BCA ¶ 29,856; Nancy J. Scheid, GSBCA 14392-RELO, 98-1 BCA ¶ 29,698.

The rule applies regardless of the extenuating circumstances leading to the early occupancy of the permanent residence. <u>Baker</u> (employee fled temporary quarters in high-crime area); <u>Scheid</u> (short-term rental of permanent residence until house at old station sold). We understand the circumstances that caused claimant to leave temporary quarters early, but those circumstances do not permit us to allow reimbursement that is contrary to regulation.

We have allowed reimbursement in similar but distinguishable circumstances. In one instance, due to the timing of his arrival at his permanent station, an employee spent the weekend in an unfurnished apartment that was to become his permanent quarters and then moved into temporary quarters. We concluded that claimant did not intend to move permanently into the apartment at the time of his weekend sojourn and was entitled to TOSE reimbursement for his stay in the temporary quarters after he had left the apartment. Gerald Taylor, GSBCA 15251-RELO, 00-2 BCA ¶ 31,016. Here, unlike the claimant in Taylor, claimant and his family remained in the permanent quarters. We have also allowed TOSE reimbursement when an employee and his family stayed in permanent quarters at the old station for ten days after the furniture had been removed but ate at restaurants. At that time, the FTR and the applicable regulations of the Department of State required an employee to "vacate" the residence at the old station to be entitled to reimbursement of TOSE expenses at the old station. Following a line of cases from the General Accounting Office, we held that claimant and his family had constructively vacated the residence. Gordon Giffin, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100. This case does not involve the issue of whether claimant or his family had vacated the residence.

We sustain the agency's determination.

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ANTHONY S. BORWICK Board Judge