

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 19, 2001

GSBCA 15581-RELO

In the Matter of PERCIVAL A. JORDAN

Percival A. Jordan, Silver Spring, MD, 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, Percival A. Jordan, an employee of the United States Customs Service, has requested review of the agency's denial of his claim for temporary quarters subsistence expenses (TQSE) arising from his permanent change of station (PCS). Based solely on claimant's signing a twelve-month lease, the agency determined that claimant was not entitled to TQSE reimbursement after September 1, 2000, when his family moved into an apartment in Silver Spring, Maryland. The agency believed that the claimant intended his apartment to be permanent quarters. The agency failed to take into account all of the factors required by the Federal Travel Regulation (FTR). We return the matter to the agency for consideration of the relevant factors.

The agency authorized claimant to transfer from Caracas, Venezuela, to Washington, D.C., with a reporting date of January 7, 2001. In August 2000, claimant's wife and two sons arrived in Washington, D.C. The family decided that it would be best for their two sons to start the school year in the Washington, D.C., area, rather than having them switch schools in January. Mrs. Jordan and her two sons temporarily resided with relatives in the Washington, D.C., area, but soon sought other accommodations. Mr. Jordan was unaware of his exact relocation station; thus it was necessary to secure an apartment without knowing how convenient or inconvenient a particular location would be for Mr. Jordan.

After some difficulty in finding a residence meeting the family's needs, Mrs. Jordan was finally able to secure a 1129 square foot, two bedroom apartment--number 638--at an apartment complex in Silver Spring, Maryland. Claimant's wife signed a twelve-month lease on September 1, 2000. According to Mr. Jordan, his wife immediately put her name on a waiting list for a larger apartment. No household goods (HHG) were delivered to apartment 638.

Mr. Jordan arrived in the Washington, D.C., area on January 17, 2001, and checked into a hotel in Arlington, Virginia. Mr. Jordan stayed there for two and one half weeks and rented a car to commute to and from work. However, at some point thereafter, Mr. Jordan became aware that some TQSE expenses would not be covered, so he moved to the apartment in Silver Spring. The family of four lived in apartment 638 for approximately five months. The lease for apartment 638 was scheduled to terminate on August 31, 2001. However, on May 22, 2001, the Jordans signed a new one-year lease, for apartment 725, to commence June 1, 2001. Apartment 725 is a 1374 square foot, small three bedroom apartment. Three days later, on June 4, 2001, the HHG were delivered to apartment 725.

Claimant submitted a reimbursement voucher for TQSE expenses for himself and his family prior to his move to apartment 725. The agency denied the voucher, concluding that since claimant's family occupied permanent quarters--apartment 638--on September 1, 2000, no TQSE could be reimbursed past that date. The agency's conclusion was based solely on claimant's signing a twelve-month lease:

You have signed a [twelve]-month lease for the . . . address that you are claiming Temporary Quarters. A [twelve]-month lease from the Government's viewpoint constitutes a permanent residence, therefore no expenses for that location are reimbursable.

Discussion

The payment to a transferred employee of subsistence expenses while occupying temporary quarters is authorized by 5 U.S.C. § 5724a(c) (Supp. V 1999).

Temporary quarters "refers to lodging obtained for the purpose of temporary occupancy from a private or commercial source." 41 CFR 302-5.1 (2000). This is an instance where there is uncertainty about whether quarters were temporary. Whether quarters are temporary must be based on the particular facts and circumstances involved in each individual case. The intent of the employee at the time he or she moves into the dwelling is the critical factor in the determination as to whether the quarters were initially temporary in nature. Stephen A. Monks, GSBCA 15029-RELO, 00-1 BCA ¶ 30,650; Kim R. Klotz, GSBCA 13648-RELO, 97-1 BCA ¶ 28,789.

The FTR states the factors to apply in determining the intent of the employee, i.e., 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. 41 CFR 302-5.305.

Here the agency decided that claimant's residence at apartment 638 was not temporary based solely on claimant's signing of a twelve-month lease. However, we have consistently held that the signing of a twelve-month lease is not alone determinative of an employee's intent in making the quarters permanent or temporary. The agency must weigh all of the specified factors to make that determination. Stephen A. Monks, GSBCA 15029-RELO, 00-1 BCA ¶ 30,650; Paul E. Dyer, 13802-RELO, 97-1 BCA ¶ 28,936; see also Paul W. Johnson, GSBCA 13815-RELO, 98-1 BCA ¶ 29,407 (delivery of household goods to

residence insufficient by itself to sustain agency determination that quarters were permanent).

In this case, the agency failed to weigh all factors necessary to determine the claimant's intent in leasing apartment 638. In addition to signing the twelve-month lease, the agency must consider (1) claimant's lack of delivery of HHG to apartment 638, (2) the fact that claimant's spouse immediately put the family on a waiting list for a larger apartment, (3) claimant's termination of the lease for apartment 638 when larger quarters became available; (4) claimant's stay separate from his family in Arlington, Virginia; (5) the size differences in apartment 638 and 725; (6) the reasons for claimant's desiring a larger apartment; (7) the length of time claimant's family resided in apartment 638.

We return this matter to the agency for a determination in accordance with this opinion.

ANTHONY S. BORWICK
Board Judge