

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

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February 26, 2002

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GSBCA 15650-RELO

In the Matter of SCOTT E. ENGLISH

Scott E. English, Springfield, OR, Claimant.

Robert D. Brown, Jr., Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**HYATT**, Board Judge.

Claimant, Scott E. English, an employee of the United States Army Corps of Engineers with the Portland, Oregon, District, was issued permanent change of station (PCS) orders, transferring him from Portland to the Eugene, Oregon, area. The PCS was issued as a result of the Portland District's determination that a new field office was required in Eugene and that Mr. English's expertise was needed there to accommodate new and future projects.

Claimant's PCS orders, which were issued on July 24, 2000, authorized various benefits associated with relocation, including sixty days of temporary quarters subsistence expenses (TQSE). Mr. English commenced TQSE on August 13, 2000; the sixty day period was scheduled to end on October 13, 2000.

Eugene, Oregon, is a popular recreational area, and housing in a reasonable price range near Eugene is scarce. The shortage of housing has been exacerbated by this area's recent growth of high technology industries in the Eugene area. After making an extensive search for suitable housing, claimant found a home for sale that he could afford, but with conditions on when he could occupy it. The seller was building a new home and would agree to sell only if she could remain in the house, rent-free, until her new home was available for occupancy. Claimant states that this was a take it or leave it situation, and that he did not anticipate that he could do any better given market conditions. Thus, although Mr. English located a suitable residence, which he purchased in September, he was unable to occupy it until much later, in December of 2000.

Accordingly, on August 23, 2000, claimant formally requested that his TQSE be extended for an additional sixty days. This request was approved by the appropriate

authorizing official within the Portland District, with the concurrence of the finance office in Portland. Based on the justification provided by Mr. English and her knowledge of the Eugene area housing market, the authorizing official authorized the maximum 120 days for TQSE, extending it through December 12, 2000. Mr. English incurred expenses in reliance on this authorization.

Subsequently, the Corps' finance office in Tennessee reviewed the expenses incurred in connection with this PCS and questioned the propriety of the decision to extend TQSE for Mr. English. The Tennessee finance office disagrees that compelling circumstances beyond the employee's control existed such that an extension of TQSE could properly be approved. The Tennessee finance office has sought to recover the additional TQSE payments made and has withheld reimbursement of claimant's real estate transaction expenses. Mr. English has asked us to review the decision of the finance office in Tennessee.

### Discussion

Employees who are "transferred in the interest of the Government from one official station or agency to another for permanent duty" may be reimbursed for certain expenses incident to the transfer. These expenses include "[s]ubsistence expenses of the employee and his immediate family for a period of sixty days while occupying temporary quarters when the new official station is located within the United States." Reimbursement of TQSE may be extended for an additional sixty days if the head of the agency concerned, or his designee, determines that there are compelling reasons for the continued occupancy of temporary quarters. 5 U.S.C. § 5724a(c)(1), (2) (2000). This statutory provision is implemented by provisions of the Federal Travel Regulation (FTR), and by the Joint Travel Regulations (JTR), which apply to civilian employees of the Department of Defense. Both the FTR and the JTR explain that a "compelling reason" is an event that is beyond the relocating employee's control and is acceptable to the agency. Examples include, but are not limited to, situations in which the employee cannot occupy the new permanent residence because of unanticipated problems such as a delay in settlement on the new residence, a short-term delay in construction of the residence, or the inability to locate a permanent residence which is adequate for the employee's family's needs because of housing conditions at the new official station. 41 CFR 302-5.105 (1998); JTR C13115-B.1; see Nora L. Donohue, GSBCA 15687-RELO (Feb. 12, 2002); John E. Joneikis, GSBCA 15455-RELO, 01-2 BCA ¶ 31,514.

As we explained in Donohue and in Joneikis, the concerns expressed here by the Corps' finance center in Tennessee are based on previous decisions in which both the Board and its predecessor, the General Accounting Office (GAO), have upheld agency decisions denying extensions of TQSE. These decisions recognize that the authorizing official has considerable and broad discretion to determine what constitutes a "compelling reason" to support an extension, whether those conditions are present, and whether to extend TQSE benefits for periods beyond the initial sixty days. The Board will not overturn an agency's determination whether to approve or deny a request for an extension of TQSE unless we find it to have been arbitrary, capricious, or contrary to law. See, e.g., Victoria E. Caldwell, GSBCA 14666-RELO, 99-1 BCA ¶ 30,364; Ralph M. Martinez, GSBCA 14654-RELO, 98-2 BCA ¶ 30,105; Roland J. Landis, GSBCA 13690-RELO, 97- 2 BCA ¶ 29,157.

As claimant and the Portland office have pointed out, the Board has sustained decisions to extend TQSE when the transferring employee was unable either to purchase or to occupy permanent quarters at the new location for various reasons beyond the employee's control. For example, in Steven F. Bushey, GSBCA 15289-RELO, 01-1 BCA ¶ 31,291, the Board held that an employee could continue to qualify for TQSE after the purchase of a permanent residence because the structure on the property had to be torn down and replaced to accommodate his family. In Donohue we held that the authorizing official could properly approve, based on an assessment of the applicable facts and circumstances, an extension of TQSE for an employee who had difficulty selling the old residence and locating suitable, affordable housing at the new duty station.

Here, as in Donohue, it is significant that the local authorizing official examined the reasons underlying claimant's request for an extension and presumably considered that they were compelling and sufficient so as to justify approving the extension. In this case particularly, both the authorizing official and the local finance office carefully considered the facts and circumstances, and the applicable regulations, and concluded that it would be appropriate to authorize the requested extension. We have recently recognized that the local authorizing official is often in the best position to make determinations of this nature. See Brian T. Walsh, GSBCA 15703-TRAV (Feb. 15, 2002). The officials in Portland were satisfied that, given the tight housing market in the Eugene area, Mr. English simply did not have the leverage to take possession of the new residence any more quickly than he did. Because of the tight supply of housing and escalating prices in the area, other options were unavailable. Thus, they concluded that compelling reasons existed to justify the requested extension. Regardless of the views of the Tennessee finance office, nothing in the record suggests that the authorizing official's decision was arbitrary, capricious, or contrary to law. As such, the extension of TQSE was properly granted and claimant is entitled to be paid.

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CATHERINE B. HYATT  
Board Judge