

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

September 6, 2002

GSBCA 15829-RELO

In the Matter of MARVIN R. McGEE

Marvin R. McGee, St. Mary's, GA, Claimant.

G. J. Murphy, Disbursing Officer, Personnel Support Activity, Naval Air Station Jacksonville, Jacksonville, FL, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

An agency has broad discretion to authorize extensions of time, up to 120 days, for reimbursement of actually-incurred temporary quarters subsistence expenses (TQSE). When an agency authorizes a relocation benefit such as TQSE which it has the discretion to provide, the agency may not, after the employee incurs allowable costs and requests reimbursement, deny reimbursement of those costs.

Background

The Department of the Navy transferred Marvin R. McGee from Norfolk, Virginia, to Kings Bay, Georgia. Mr. McGee reported for duty in Georgia in October 2001. His orders authorized reimbursement of actually-incurred TQSE for a period of sixty days.

On November 29, 2001, Mr. McGee requested a thirty-day extension of TQSE benefits. He told agency officials:

My wife and I are currently staying in a local hotel at considerable expense. We own a motor home and have been persistently trying to secure property to park the motor home on until our house can be built. We have not been able to complete the arrangements because the property owner has been out of town. . . . [T]he extension would allow me adequate time to finalize arrangements for other, less expensive temporary lodging.

The acting comptroller of Navy Region Southeast granted this request.

When Mr. McGee submitted a voucher for reimbursement of the TQSE he had incurred during that thirty-day period, however, the disbursing officer denied payment. The disbursing officer believes that the acting comptroller did not have good grounds for granting the extension. Relying on paragraph C13210-B of the Defense Department's Joint Travel Regulations (JTR) and Comptroller General decisions cited in a 1996 commercial publication called the Federal Pay and Benefits Reporter, the disbursing officer wrote:

The afore mentioned [sic] references allow for an extension of TQSE due to delayed occupancy of new permanent quarters because of unanticipated problems or unforeseen short-term delays. The [employee] transferred in October 2001, and as of February 2002, has not even secured property, let alone beg[u]n construction on a new residence.

Discussion

A TQSE allowance "is intended to reimburse [a transferred] employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters." 41 CFR 302-5.3 (2001). Whether to authorize TQSE to a relocating employee is a determination which is wholly within the discretion of the agency involved. 5 U.S.C. § 5724a(c)(1) (2000); 41 CFR 302-5.6; JTR C13105, C13200, C13300 (Oct. 1, 2001). Similarly, when the actual expense method of reimbursement of TQSE is elected, whether to extend the period of eligibility for reimbursement of TQSE beyond sixty days (up to a total of 120 days) is also a decision which is within the discretion of the agency. 5 U.S.C. § 5724a(c)(2); 41 CFR 302-5.104; JTR C13210-B.

The Federal Travel Regulation (FTR) and the JTR both permit the agency to extend the period of eligibility for reimbursement of TQSE beyond sixty days if the agency determines that there is a compelling reason for the employee to continue occupying temporary quarters. The compelling reason must be beyond the employee's control and acceptable to the agency. 41 CFR 302-5.104, -5.105; JTR C13210-B.1. While the regulations provide examples of circumstances which might qualify as being sufficient justification for extending the TQSE eligibility period, they do not limit the type of situation which an agency official could find sufficient for authorizing an additional period of TQSE. 41 CFR 302-5.105; JTR C13210-B.1.a-e. The JTR also require that an employee must provide written justification when asking for an extension of the TQSE period. JTR C13210-B.2, -C.

Mr. McGee gave the Navy a written justification for an extension of the period of his eligibility for TQSE, and the acting comptroller found this justification to be a compelling reason, acceptable to the agency, for extending the period. The circumstances cited – an inability to conclude arrangements for the placement of a mobile home, due to the temporary absence of the owner of the land on which the mobile home might sit – may be considered to be beyond the control of the employee. Thus, it was not arbitrary, capricious, or an abuse of discretion for the acting comptroller to make this finding. See, e.g., James E. Roberts, GSBCA 15592-RELO, 01-2 BCA ¶ 31,567 (setting forth standard of review); Vanessa A. Deal, GSBCA 15481-RELO, 01-1 BCA ¶ 31,407 (same). These circumstances were also acceptable to an agency official with authority to make the determination. (The Navy has not asserted that the acting director was without authority to act as he did.) This is all that is

required to make the extension permissible. Scott E. English, GSBCA 15650-RELO, 02-1 BCA ¶ 31,821; Nora L. Donohue, GSBCA 15687-RELO, 02-1 BCA ¶ 31,780; John E. Joneikis, GSBCA 15455-RELO, 01-2 BCA ¶ 31,514.

Whatever may have transpired subsequent to the acting comptroller's decision – whether Mr. McGee actually did conclude arrangements for the placement of his mobile home or not – does not affect our conclusion as to the reasonableness of the decision. That matter is to be assessed as of the time the decision was made. Cf. Brenda Byles, GSBCA 14592-RELO, 99-1 BCA ¶ 30,156 (1998) (whether quarters are temporary or permanent is to be determined as of the time the living arrangement was entered into); Kim R. Klotz, GSBCA 13648-RELO, 97-1 BCA ¶ 28,789 (same). The Navy has not alleged that Mr. McGee's justification, on which the acting comptroller relied, was fraudulent.

An agency may not exercise its discretion to authorize a relocation benefit to an employee and then, after the expenses are incurred, deny the authorized reimbursement. E.g., Linda M. Conaway, GSBCA 15342-TRAV, 00-2 BCA ¶ 31,133; Elizabeth A. Hair, GSBCA 14285-RELO, 98-2 BCA ¶ 29,914; cf. Louis L. Lawes, GSBCA 15577-RELO, 02-1 BCA ¶ 31,748 (agency is not bound by authorization not permitted by statute or regulation). Having permissibly authorized an additional thirty days of TQSE to Mr. McGee, the Navy may not now deny reimbursement.

The Comptroller General decisions referenced in the 1996 commercial publication are all consistent, in the most important regard, with our reasoning in this case: they reviewed agency determinations regarding extensions of TQSE eligibility periods under a highly discretionary standard. That standard was the same one we apply here: the determinations will be upheld unless they were arbitrary, capricious, or an abuse of discretion. Daniel G. Colley, B-254120 (Dec. 14, 1993); William M. Stoddard, B-248012 (Aug. 25, 1992); Stephen P. Szarka, B-247426 (June 4, 1992); Paul E. Storer, 67 Comp. Gen. 567 (1988).

The point for which the disbursing officer cites these cases is not helpful to the resolution of Mr. McGee's claim. In each of the cases, an employee made arrangements to move into permanent quarters more than sixty days after his period of TQSE eligibility began. The agency denied the employee's request for an extension of the period because the cause for the extension (delay in construction of a new home or settlement on a purchase of an existing home) did not occur within the sixty-day eligibility period. The Comptroller General based his decisions on an application of the facts to a section of the FTR which provided that extensions of the TQSE period could be authorized "only in situations where there is a demonstrated need for additional time due to circumstances which have occurred during the initial 60-day period of occupancy." This requirement was eliminated from the FTR in March 1997. 62 Fed. Reg. 13,756, 13,759 (Mar. 21, 1997) (replacing 41 CFR 302-5.2(a)(2) (1996) with 41 CFR 302-5.104, -5.105 (1997)); see Phillip A. Jones, GSBCA 14355-RELO, 98-2 BCA ¶ 29,793. It was eliminated from the JTR in December 1997. Donohue; Joneikis.

As we have cautioned in the past, statutes and regulations governing employee travel and relocation benefits change from time to time, so agencies should make sure that they rely only on those Comptroller General and Board rulings which apply the law that is applicable to the claims before them. George S. Page, GSBCA 15114-RELO, 00-1 BCA ¶ 30,707

(1999); Dale G. Luckman, Jr., GSBCA 14874-RELO, 99-2 BCA ¶ 30,431. The Comptroller General decisions cited by the Navy are no longer good law insofar as they apply a regulation which no longer exists. Thus, whether Mr. McGee's difficulties in locating the owner of the property on which he wanted to place his mobile home occurred before or during his initial period of eligibility for TQSE is now immaterial.

Decision

The Navy authorized reimbursement of TQSE incurred by Mr. McGee for a period of ninety days, and that authorization was not arbitrary, capricious, or an abuse of discretion. Having made this permissible authorization, the agency may not dishonor it now. The disbursing officer should reimburse the employee for the TQSE claimed, within the limitations on amount contained in relevant regulations.

STEPHEN M. DANIELS
Board Judge