

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 28, 2002

GSBCA 15876-RELO

In the Matter of SHAUNA TURNBULL

Shauna Turnbull, Yuma, AZ, Claimant.

D. Mark Catlett, Principal Deputy Assistant Secretary for Management, Department of Veterans Affairs, Washington, DC, appearing for Department of Veterans Affairs.

NEILL, Board Judge.

Claimant, Ms. Shauna Turnbull, a former employee of the Department of Veterans Affairs, asks that we review a ruling of the agency denying a claim for payment of temporary quarters subsistence expenses (TQSE) for her daughter. Ms. Turnbull contends that her daughter's expenses were incurred in conjunction with her own transfer from one duty station to another. We affirm the agency's decision and, consequently, deny Ms. Turnbull's claim.

Background

Effective January 16, 2001, Ms. Turnbull was transferred from her duty station at the United States Navy offices in Newport, Rhode Island, to a new duty station at the offices of the Department of Veterans Affairs in Bedford, Massachusetts. Her travel orders indicate that she was authorized subsistence expenses for herself and her family while occupying temporary quarters for a period not to exceed thirty days.

Ms. Turnbull did not relocate immediately to a residence at or near her new duty station in Bedford. Rather, she remained with her daughter at their home in Seekonk, Massachusetts, near her old duty station, and commuted daily to Bedford (a round trip of approximately three hours). Claimant's reason for remaining with her daughter at their home in Seekonk was to permit her daughter to complete the eighth grade. It was claimant's intention to relocate to the Bedford area during the ensuing summer months.

Ms. Turnbull explains that, on starting work at her new duty station, she found to her surprise that the travel requirements associated with the position were far more demanding than she had been told they would be. She writes that it soon became apparent that, with her demanding travel schedule, she would have difficulty, as a single parent, caring for her

daughter no matter where the child went to school. The situation was further complicated when Ms. Turnbull was advised that her daughter had tested well in terms of academic ability and would clearly benefit from a challenging academic program.

After exploring various schooling options, Ms. Turnbull decided to enroll her daughter in a private boarding school in Portsmouth, Rhode Island. She arranged to move her daughter and her daughter's household goods to the new school at the start of the fall term on September 8. Because her daughter's school was even farther away from Bedford than was Seekonk, Ms. Turnbull decided to stay in Seekonk and delay her own relocation to Bedford until she was certain that her daughter was well settled at the new school.

In July 2001, Ms. Turnbull requested an advance in permanent change of station (PCS) funds solely for her daughter. Specifically, among other items, she sought the cost of maintaining and lodging her daughter for the first thirty days at the new school in Portsmouth. In seeking this advance, Ms. Turnbull explained:

After researching schooling options in the area, I have opted to permanently relocate her to a residential school . . . in Portsmouth, RI. . . . My plan is to allow [her] to take advantage of the opportunities at this site year round. . . . In January 2002, I do plan to permanently move from my home in Seekonk to a location closer to work in Bedford and I plan to execute my own personal PCS travel benefits. [My daughter's] permanent address of record will be the new location, as she will be with me on holidays.

The advance in PCS funds which Ms. Turnbull requested was not provided. Her subsequent claims for these costs, after they were actually incurred, also have gone unpaid. The agency has explained to the claimant that it does not consider that the living arrangements she made for her daughter at Portsmouth meet the requirements of temporary quarters. The agency notes that the claimant's daughter is not lodged in the vicinity of either the old or the new duty station, the intent of the living arrangements is primarily to meet the educational needs of the claimant's daughter and, finally, the arrangements made for the daughter are permanent rather than temporary. It is this determination of the agency which the claimant now asks us to review.

Discussion

The fundamental issue presented here is whether the living arrangements made by claimant at her daughter's new school are in fact temporary quarters. On occasion, this is not an easy determination. What is clear, however, is that under the Federal Travel Regulation (FTR) as it read at the time of Ms. Turnbull's transfer and as it still reads, this determination is left to the discretion of the employee's agency. In making this determination, the agency is expected to bear in mind such factors as: 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. See 41 CFR 302-5.305 (2000) (FTR 302-5.305).

Obviously, in the instant case not all the factors mentioned in the FTR are relevant. Of those that are, perhaps the most significant is the employee's actual expression of intent. In her request for an advance of PCS funds, Ms. Turnbull candidly outlined for the agency her plans for her daughter's living arrangements. She spoke of "permanently" relocating her to a residential school and of having her daughter take advantage of the opportunities at this site "year round." Any new residence which the employee might eventually occupy in the Bedford area would serve only as a "permanent address of record" based on the daughter's visit there on holidays. Given this indication of the employee's intent, the agency determined that her daughter's stay at school in Portsmouth was not temporary.

The agency's determination is correct. It closely follows similar determinations which this Board and the General Accounting Office, our predecessor in deciding relocation claims, have made that the residence of a transferred employee's son or daughter in a college dormitory does not qualify as temporary quarters. Lee R. Vickson, GSBCA 13890-RELO, 97-1 BCA ¶ 28,959; James Y. Kurihar, B-164746 (Aug. 20, 1972).

Claimant, in commenting on the agency's report, contends that the living conditions at her daughter's school do not meet the definition of "permanent." This contention is hardly persuasive. As now made, it is unsupported and stands in sharp contrast with statements made by claimant in July 2001 when she was seeking a PCS advance on her daughter's behalf. In any event, as we have already noted, the FTR leaves the determination of what constitutes "permanent" quarters not to the employee but to the employee's agency. Having concluded that the agency's determination in this case is correct, we have no intention of disturbing it.

Ms. Turnbull also disagrees with the agency's finding that her daughter's school is not in the vicinity of either her old or her new duty station. She states that the school is within commuting distance of either. From the record, it would appear that the school is approximately seventy-five miles from Bedford while Seekonk is sixty-four from that town. While claimant may have the upper hand on this issue, it is of no benefit to her. This issue relates to a provision within the FTR which states that the employee and his or her immediate family may occupy temporary quarters at Government expense within reasonable proximity of the employee's old and/or new official stations. Reimbursement for occupying temporary quarters at any other location is not permitted, unless justified by special circumstances reasonably related to the employee's transfer. See FTR 302-5.9. Since the agency has already determined that the quarters for Ms. Turnbull's daughter at Portsmouth were not temporary, the provisions of FTR 302-5.9 – which deal with temporary quarters – are inapplicable.

An additional reason for rejecting Ms. Turnbull's claim of TQSE for her daughter can be found in FTR 302-5.109, which states that the period for which the employee is authorized to claim actual TQSE reimbursement must run concurrently with that for which TQSE is authorized for a member of the employee's immediate family. Obviously, the two periods would not have been concurrent in the present case. Claimant clearly explained to the agency in July 2001 that it was her intention to claim TQSE for her daughter starting September 8, 2001, while she, herself would defer claiming any PCS benefits until the start of the following year.

For the reasons stated above, therefore, we affirm the agency's denial of Ms. Turnbull's claim. The claim is denied.

EDWIN B. NEILL
Board Judge