

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

December 4, 2002

GSBCA 15942-RELO

In the Matter of DANIEL E. VARGAS

Daniel E. Vargas, Miami, FL, Claimant.

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

NEILL, Board Judge.

Mr. Daniel E. Vargas, an employee of the United States Customs Service, disagrees with certain determinations made by his agency regarding his claims for reimbursement of temporary quarters subsistence expenses (TQSE). In view of Mr. Vargas' disagreement, the agency has asked this Board to review those determinations for correctness. We agree with the determinations made by the agency regarding Mr. Vargas' claim for expenses incurred at his new duty station. We disagree, however, with the agency's determination that the claimant's dependents were not entitled to any TQSE while Mr. Vargas' wife and children remained in the family residence in order to permit the children to complete their school semester.

Background

Mr. Vargas was transferred from Washington, D.C., to Miami, Florida, in the fall of 2001. In support of his permanent change of station, Mr. Vargas was authorized transportation expenses for himself, his wife, and their three children. He was also authorized TQSE for himself and his dependents for a sixty-day period.

Claimant's reporting date for his new duty station in Miami was September 24. He began living in nearby temporary quarters on that date. His wife and three children, however, did not accompany him to Florida. Rather, Mrs. Vargas and the three children remained in the family's residence in Virginia in order to permit the children to finish the school semester.

Mr. and Mrs. Vargas had previously leased their residence in Virginia for a twelve-month period beginning November 1, 2000. Under the terms of the lease, they were to pay a monthly rent of \$1666 plus a pet charge of \$15 per month and a parking garage fee

of \$100 per month. The lease provided for termination before expiration of the twelve-month lease term provided the residents gave the owner at least sixty days written notice of termination, paid all rents and other charges through the date of termination, and paid a termination fee of \$1666 prior to vacating and/or turning in the keys to the apartment.

The record contains a copy of a canceled check dated September 28, 2001, and written by Mr. Vargas to his landlord for \$1696. A barely legible, hand-written entry on the memo-line at the bottom left-hand corner of the check shows the address and apartment number of the claimant's apartment and the words "Rent/Oct 2001."

The voucher submitted by Mr. Vargas for the first thirty days of TQSE sought lodging and other subsistence expenses for himself and his family. Of the TQSE Mr. Vargas sought for himself in Florida, the agency disallowed \$256.40. This amount was apparently paid by Mr. Vargas during the first thirty-day period but was applicable to lodging to be furnished during the subsequent thirty-day period. For his wife and three children, Mr. Vargas claimed a total of \$3425.07. Included in this figure was payment of \$1696 for lodging. The agency declined to pay any TQSE for the four dependents of Mr. Vargas on the ground that they had not vacated the residence in which they had been living at the time Mr. Vargas' travel authorization was issued.

In his voucher covering the second thirty-day period of authorized TQSE, Mr. Vargas sought for himself reimbursement of TQSE for the first twenty-three days of this period and for an additional seven days following an eleven-day interval during which he was on authorized annual leave. The agency denied his claim for the final seven days on the ground that his sixty-days of authorized TQSE expired during his period of leave. The last seven days claimed, therefore, were seen as falling outside the sixty-day period of authorized TQSE. In his voucher covering the second thirty-day period, Mr. Vargas also sought TQSE for his four dependents. The claim was limited to \$1643.24 and did not include any claim for lodging. The period of time for which TQSE was sought was the same as that in Mr. Vargas' claim for his own TQSE, namely, the first twenty-three days of the second thirty-day period and an additional seven days following the claimant's leave of eleven days. This claim of TQSE for his dependents was denied for the same reason given in the agency's denial of TQSE for his dependents during the first thirty days of authorized TQSE, namely, the dependents had not yet vacated the Virginia residence.

Discussion

We turn first to Mr. Vargas' claim for reimbursement of his own TQSE. We find that the agency correctly declined to pay \$256.40 of the amount claimed for lodging during the first thirty-day period. Because this amount represented an advance payment for lodging to be supplied during the first five days of the subsequent thirty-day period, it logically belonged in a voucher covering the second thirty-day period rather than in that covering the first thirty-day period.

We likewise have no objection to the agency refusing to pay for the last seven days claimed by Mr. Vargas for his own TQSE during the second thirty-day period. The Federal Travel Regulation (FTR) in effect at the time provides that the actual TQSE reimbursement

period is measured in consecutive days, and, once begun, normally continues to run whether or not the employee occupies temporary quarters. The same provision, however, also states that the authorized TQSE period can be interrupted in three specific instances. The first is for the time allowed for en route travel between the old and new official stations. The second is for circumstances attributable to official necessity. The third is for a non-official necessary interruption beyond the employee's control and acceptable to the agency. 41 CFR 302-5.106 (2001) (FTR 302-5.106)¹; Michael W. Burns, GSBCA 15649-RELO, 02-1 BCA ¶ 31,691 (2001).

Assuming that the annual leave of eleven days taken by claimant after the twenty-third day of the second thirty-day period of TQSE was not a necessary interruption beyond Mr. Vargas' control, the agency correctly concluded that the TQSE continued to run notwithstanding the fact that Mr. Vargas was not actually occupying his temporary quarters. Denial of the TQSE for the final seven days was, therefore, proper. We have previously held that annual leave not related to the employee's transfer does not interrupt the running of authorized TQSE period even though expenses incurred by the employee during that period of time cannot be paid. Robert E. Jacob, GSBCA 13792-RELO, 97-2 BCA ¶ 29,218. Of course, if the agency, on further inquiry, should determine that Mr. Vargas' leave was necessary and for reasons acceptable to itself and beyond the claimant's control, then the TQSE period could be deemed interrupted and the claim for the subsequent seven days granted. James E. Roberts, GSBCA 15592-RELO, 01-2 BCA ¶ 31,567.

We disagree, however, with the agency's conclusion that Mr. Vargas' dependents were not entitled to TQSE during either the first or the second thirty-day period of authorized TQSE. The agency's denial appears to be based upon a former, well established provision of the FTR which defined "temporary quarters" as "lodging obtained from private or commercial sources for the purpose of temporary occupancy after vacating the residence occupied when the transfer was authorized." FTR 302-5.2(c) (1996). As of March 22, 1997, the FTR definition of "temporary quarters" was changed to read: "lodging obtained for the purpose of temporary occupancy from a private or commercial source."² Following this change in the regulation, we concluded that, in eliminating from the definition of "temporary quarters" the phrase "after vacating the residence occupied when the transfer was authorized," regulation writers clearly intended to eliminate this requirement. George S. Chaconas, GSBCA 14278-RELO, 98-1 BCA ¶ 29,728.

In dealing with TQSE claims since revision of the definition of temporary quarters, therefore, we have recognized that the residence in which the government employee was living at the time of his or her transfer may, nonetheless, become temporary quarters after authorization of the transfer. Robert Vickery, GSBCA 15040-RELO, 99-2 BCA ¶ 30,542; Chaconas. Certainly this occurs when a transferred employee's spouse agrees to remain behind in the former residence with the family's children, on a temporary basis, in order to

¹ This provision is unchanged and now appears at FTR 302-6.106 (2002).

² The definition remains unchanged in the current version of the FTR. See FTR 302-6.1 (2002).

permit the children to complete their school semester. Indeed, the FTR expressly recognizes the possibility that this may occur and uses such a situation as an example of when temporary quarters in two locations are permitted. See FTR 302-5.10 (2001).³

In reviewing the record in this case, we note that even the claimant himself appears to be less than certain about claiming the cost of renting his home in Virginia for his dependents after his departure for his new duty station. Although he included his payment of \$1696 in late September 2001 in his first TQSE voucher, Mr. Vargas contends that it represented a lease termination cost. Aside from this cost, he claimed nothing more for the temporary lodging of his dependents at his prior residence in Virginia.

We can find nothing in the record which actually supports Mr. Vargas' contention that this payment of \$1696 to his landlord represented a lease termination cost. The lease itself was due to expire at the close of October. Prior to its expiration, Mr. Vargas was given the choice of renewing the lease on a twelve month, seven month or one-month basis. It would have made little sense for him to pay a lease termination fee upon his departure from Virginia when his family planned on remaining in the house on a temporary basis. Further, since the twelve-month lease was due to expire at the end of October, it had, in effect, by the time of Mr. Vargas' departure, become a virtual month-to-month lease. There is no evidence that formal written notice of termination was given as required under the lease and the check for \$1696 itself expressly states that it was for October rent.

We conclude, therefore, that the payment of \$1696 to Mr. Vargas' landlord was nothing more than a bonafide lodging cost for the month of October. Consequently, this cost and any other lodging costs actually paid by Mr. Vargas to house his family in his former Virginia residence during the sixty days of the authorized TQSE are legitimate temporary lodging costs and may be reimbursed if found to be within the allowable limits established for an employee's dependents and otherwise allowable under applicable regulation.

A final word remains to be said regarding the period of time covered by any amended claim Mr. Vargas may wish to submit regarding TQSE for his dependents. Although, as we have already noted, the FTR permits an employee to recover for TQSE in more than one location, one must remember that the eligibility period for the employee and for members of his or her immediate family lodged elsewhere must run concurrently. See FTR 302-5.109 (2001).⁴ Any revised TQSE claim for Mr. Vargas' dependents must, therefore, be for costs incurred solely within the originally authorized sixty-day period. This should include expenses incurred during Mr. Vargas' eleven-day leave since, although he was precluded

³ Now FTR 302-6.10 (2002).

⁴ Now FTR 302-6.109 (2002).

from being reimbursed for his own expenses during that time, his period of authorized TQSE was nonetheless still running in concert with that of his dependents.⁵

We recommend, therefore, that the claimant revise his TQSE vouchers in accordance with this decision and that the agency pay the claimed expenses if otherwise allowable under regulation.

EDWIN B. NEILL
Board Judge

⁵ If the agency, on further review, concludes that the authorized TQSE was legitimately interrupted by Mr. Vargas' leave, then there would be no reimbursement of expenses incurred either by Mr. Vargas or his dependents during the period of his leave, and reimbursement would be instead for expenses incurred by him and his dependents during the remaining seven days following the completion of his leave.