

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

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February 24, 2003

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GSBCA 15986-RELO

In the Matter of FELICIA D. DEJESUS-WALTERS

Felicia D. DeJesus-Walters, Odenton, MD, Claimant.

Patricia A. Keefer and Barbara Gaydos, Defense Finance and Accounting Service, Rock Island Arsenal, Rock Island, IL, appearing for Department of Defense.

**BORWICK**, Board Judge.

In this matter the Defense Finance and Accounting Service (DFAS or agency) denied claimant reimbursement of temporary quarters subsistence expenses (TQSE) after she moved into an apartment in Odenton, Maryland, as a result of her permanent change of station (PCS) transfer. The agency determined that the apartment was claimant's permanent quarters. Claimant states that she intended to move into the apartment temporarily. We grant the claim. The record before the Board is convincing that claimant intended to stay in the Odenton, Maryland, apartment temporarily, not permanently.

On June 24, 2002, the Department of the Army (Army) issued claimant PCS orders for her transfer from Fort Bliss, Texas, to the Army Research Laboratory, Adelphi, Maryland. Army granted claimant sixty days of TQSE, with approved increments of thirty days, not to exceed 120 days; shipment of household goods (HHG); and ninety days temporary storage of HHG, not to exceed 180 days. Claimant moved 7880 pounds of HHG to Maryland; those HHG remain in storage. Claimant says she has submitted paperwork to the Army for an extension of temporary storage of her HHG.

Upon arriving in Maryland, claimant and her spouse moved into a hotel, and stayed in the hotel between July 30 and August 2. The agency reimbursed claimant TQSE for that stay. On July 31, claimant and her spouse entered into a one-year lease for a one-bedroom apartment in suburban Maryland. The lease contained a sixty-days cancellation provision, exercisable at the option of the tenant. Claimant says that "my HHGs are still in storage with [the storage company.]" We take this statement to mean that claimant moved none of her HHG into the Odenton apartment.

On or about October 6, claimant submitted a voucher for \$2035.85 for TQSE for the lodging cost for the suburban Maryland apartment, meals, and laundry. On October 23,

2002, the agency denied claimant reimbursement of her TQSE because claimant had signed a one-year lease for the Odenton apartment.

On October 24, 2002, claimant entered a contract to purchase a town home under construction in suburban Maryland. The contract provided that completion of the sale is contingent upon the claimant obtaining a first mortgage, within thirty-five days of contract signing. The seller could extend the time for claimant to obtain the financing up to 365 days. The seller could also assist claimant in obtaining financing. The construction was scheduled for completion in March or April of 2003. Since that date extended beyond any possible temporary storage entitlement available to claimant, claimant states that she has located another residence -- this one completed -- and submitted a contract for the purchase of that residence with a closing date of January 23, 2003.

Claimant owns two other houses, one in Florida and one in Texas. Since being advised of her transfer, claimant has made vigorous efforts to sell the houses, including a substantial price reduction for the house in Texas. Claimant states that the Texas house was due to close on January 4, 2003. Claimant states that a sale or rental agreement for the two properties was necessary in order to be approved for a Veterans Administration loan on the residence she wants to purchase.

The agency states that it deemed claimant's apartment in Maryland to be permanent quarters because claimant signed a one-year lease, claimant moved HHG into the apartment, there was no evidence given of ongoing attempts to secure a new residence, and the alleged indefinite duration of remaining in the apartment while awaiting the sale of her two residences.

The Federal Travel Regulation (FTR) defines "temporary quarters" as "lodging obtained for the purpose of temporary occupancy from a private or commercial source." 41 CFR 302-6.1 (2002). The Joint Travel Regulations (JTR) are similar. JTR C13205-B.3. In determining whether quarters are permanent or temporary, the agency should consider the duration of the lease, movement of HHG into the quarters, the type of quarters, the employee's expression of intent, and the length of time the employee occupies the quarters. 41 CFR 302-6.305; see JTR C13205-B.6. The agency must consider all of the factors. Keith E. Kuyper, GSBCA 15839-RELO, 02-2 BCA ¶ 31, 983.

The fact that occupancy of temporary quarters extends for a lengthy period of time does not automatically mean that quarters were not temporary at the inception of occupancy and that the employee does not qualify for reimbursement of TQSE. Leahrae Rudolph, GSBCA 15424-RELO, 01-1 BCA ¶ 31,332; Thomas P. Simon, GSBCA 00-1 BCA ¶ 30,792. Nor does the signing of a one-year lease alone disqualify an employee from TQSE reimbursement if all of the factors combined demonstrate the employee's initial intent to remain in the quarters temporarily. Stephen A. Monks, GSBCA 15029-RELO, 00-1 BCA ¶ 30,650.

The other reasons given by the agency--the alleged movement of HHG into the apartment, the alleged lack of evidence of claimant's ongoing attempts to secure a new residence, and the alleged indefinite duration of claimant's remaining in the apartment while awaiting the sale of two houses--are equally unconvincing. In making its determination it

is apparent that the Government did not possess information that is now in the record before the Board. The Government might have come to a different conclusion had it been fully apprised of the facts.

The record before the Board shows that claimant had not moved her HHG into the apartment, claimant has signed two contracts of purchase for permanent quarters; and claimant has made vigorous and sustained efforts to sell the two houses she owns, with one effort appearing successful. The agency is simply incorrect on the matter of the HHG, and, the evidence is ample that claimant, throughout the TQSE period (and even before), has made extensive ongoing attempts to secure permanent quarters. In addition, we note that claimant's apartment lease allowed her to cancel the lease at any time, after notice to the landlord. Considering all the factors, it is clear that claimant intended to occupy the Odenton apartment temporarily, not permanently.

We also disagree with the agency's conclusion that claimant's stay in the Odenton apartment amounted to an indefinite one because claimant had to sell or rent two houses as a precondition to purchasing permanent quarters. As claimant notes, the requirement to sell or rent the houses was a requirement to obtain only a particular type of financing--a Veterans Administration loan. The record does not demonstrate that claimant's stay in the Odenton apartment is indefinite because she is unable to obtain any financing. In any event, the record shows that claimant is taking those measures necessary to obtain a mortgage to finance her purchase of permanent quarters.

In Kuyper, we sustained the agency's determination that an employee's move into quarters was permanent because claimant had vague and indefinite hopes of moving into other, larger quarters when he was financially able to do so. This matter is different from Kuyper because claimant has taken definite and substantial steps, financial and otherwise, towards the purchase of permanent quarters.

The Board grants the claim. The agency is to reimburse claimant for authorized and allowable TQSE expenses incurred after claimant moved into the Odenton, Maryland, apartment.

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ANTHONY S. BORWICK  
Board Judge