

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 29, 2004

GSBCA 16268-RELO

In the Matter of JOHN D. STRINGFELLOW

John D. Stringfellow, Monticello, AR, Claimant.

Kristine M. Chadwick, Director, Financial Management Division, Farm Service Agency, Washington, DC, appearing for Department of Agriculture.

BORWICK, Board Judge.

In this matter, claimant, an employee of the Department of Agriculture, Farm Service Agency (FSA or agency), claims that the agency wrongfully denied him an extension of the time period to incur temporary quarters subsistence expenses (TQSE). Claimant also alleges that the agency erroneously denied claimant reimbursement of certain expenses incurred in the sale of the residence at his old duty station. We deny both aspects of the claim since the agency correctly applied the Federal Travel Regulation (FTR).

Background

Requested extension of TQSE period

On or about November 7, 2002, the agency notified claimant of his permanent change of station (PCS) transfer from Star City, Arkansas, to Melbourne, Arkansas. Claimant's duty reporting date was December 15, 2002. The agency granted claimant a thirty day TQSE period, which began on December 15 and expired at the end of January 13, 2003, and a three-day househunting trip.

Claimant used the agency's relocation services program to sell the residence at his old duty station. On January 3, 2003, claimant requested a thirty-day extension of his TQSE period because of delays in completing the house appraisal by the relocation services program contractor. The agency approved the extension of the TQSE period through February 14.

On February 3, claimant requested a second extension of the TQSE period, claiming that the extension was necessary due to continuing delay by the relocation services program

contractor in appraising and selling the residence at his old duty station. On April 9, the agency approved the second extension of the TQSE period, until March 16.

On March 3, 2003, claimant requested a third thirty-day extension of the TQSE period, until April 15. Claimant stated that while the real estate appraisers had inspected his house, he had not received a copy of the appraisal nor had he received an offer for a house at his old duty station. Nevertheless, claimant advised the agency that in December he had made an offer on an acre of land on which to build new construction near his new duty station. Claimant stated that he had agreed to close on the property on February 4, but was delayed until the sale had the approval of "the Plant Board." He stated that local authorities did not meet in February due to inclement weather and that the Board's next meeting was to be on March 8.

By memorandum of April 9, the agency's State Executive Director forwarded claimant's request to the FSA's Financial Management Division (FMD) in Washington, D.C., recommending that this third extension request be granted, arguing that claimant's length of stay in temporary quarters "has been complicated by the lack of response and cooperation of the relocation service company."

On May 6, the FMD denied claimant's request for a third extension of the TQSE period for the following reasons: (1) On April 25, the relocation services program contractor informed FMD that an appraised value offer had been made on claimant's residence on March 10 and that claimant had made no effort in the past forty-five days to respond to the offer; (2) The offer from the relocation services program contractor had occurred about one month prior to the State Executive Director's letter forwarding claimant's latest request, but the State Executive Director had not mentioned the contractor's offer; and (3) There was no proof that claimant's new construction could be completed during the first ninety days of temporary quarters, or, for that matter, within the maximum 120 days of temporary quarters allowed by regulation.

In response, on May 23, claimant admitted he had received the offer from the relocation services program contractor, but stated that the FMD did not provide claimant with an answer to his request for the extension of the TQSE period for eighty-one days and that he "had to make arrangements for temporary quarters at that time." Claimant states that "upon receipt of the offer on March 10, I was able to know the equity in my house and what I could afford to build in my new location."

As to the completion date of new construction, claimant stated that he moved to his new duty station in mid-December of 2002 and that "inclement weather was prevalent through March 2003." Claimant states that "even with good weather, completion of a new constructed home would take easily 120 to 180 days."

Claim for incurred expenses of selling the residence at the old station

In the sale of the residence at the old duty station, claimant incurred \$550 of expenses for property survey, deed preparation, and recording fees. According to the agency, claimant owned several acres of property, and, in order to participate in the relocation services program, claimant subdivided the lot into a residential lot and residual lot. The agency paid \$26,897.50 for the services of the relocation services program contractor. An agency e-mail

of July 10, 2003, opined that since the agency paid the contractor that amount, claimant "is not entitled to anything beyond that."

In the agency submission to the Board the agency states that claimant did not provide complete information as to the sale price of the property to allow the agency to determine what pro-rata share of those expenses was applicable to the sale of the residence. The agency suggests that if claimant provided the information, it might pay the pro-rata share of the expenses.

Discussion

TQSE extension

Under the FTR in effect when claimant reported for duty,¹ the agency could authorize actual TQSE in increments of thirty days or less, not to exceed sixty days. 41 CFR 302-6.104. However, if the agency determined that there is a "compelling reason" for an employee to continue occupying temporary quarters after sixty consecutive days, it could authorize an extension of up to sixty additional consecutive days. *Id.* Examples of a compelling reason are: (a) delayed delivery of household goods to the new residence because of natural disasters, strikes, customs clearance, hazardous weather, and other acts of God; (b) the inability of an employee to occupy the new residence because of unanticipated problems, such as delay in settlement or short-term delay in new construction; (c) inability to secure adequate housing at the new duty station because of housing conditions; (d) sudden death or illness of the immediate family; or (e) similar reasons. 41 CFR 302-6.106.

We have consistently held that the authorizing officials have broad discretion in determining what constitutes a compelling reason to support an extension of the TQSE reimbursement period, and the Board will not overturn that determination unless we find the determination to have been arbitrary, capricious, or contrary to law. *Paula K. Fowler*, GSBCA 15670-RELO, 02-2 BCA ¶ 31,861; *Scott English*, GSBCA 15650-RELO, 02-1 BCA ¶ 31,821 (citing *Victoria E. Caldwell*, GSBCA 14666-RELO, 99-1 BCA ¶ 30,364).

When a transferred employee has contracted for new construction, knowing that the residence would not be finished before the expiration of the TQSE period, we have sustained the agency's exercise of discretion in denying an extension of the TQSE period. *Melinda Salmon*, GSBCA 15832-RELO, 02-2 BCA ¶ 31,965.

However, we have also upheld the discretion of authorizing officials in approving a request for an extension of the TQSE period for new construction beyond the expiration of the initial TQSE period, in spite of a reviewing office's refusal to approve the extension. We have done so in situations where the employee has entered into a contract for new construction that extended beyond the TQSE period because of a lack of suitable available

¹ Relocation entitlements are determined by the regulations in effect when claimant reported for duty at his new station. 41 CFR 302-2.3 (2002). Since claimant reported for duty on or about December 15, 2002, we refer to the FTR version in effect on that date.

housing at the new duty station. Nora L. Donohue, GSBCA 15687-RELO, 02-1 BCA ¶ 31,780; John E. Joneikis, GSBCA 15455-RELO, 01-2 BCA ¶ 31,514.

Here, we conclude that the agency's decision to deny claimant a third extension of the TQSE period was not arbitrary and capricious, despite the authorizing official's recommendation that the agency grant the third extension. The agency had already granted two extensions of the TQSE period, recognizing that the delay in securing the appraisals by the relocation services program contractor was a compelling reason beyond the claimant's control.

On March 10, six days before the expiration of the second period of extended TQSE, claimant had received an appraisal on the residence at the old station and was then in a position to secure housing at the new station. Claimant, however, had purchased land for new construction the previous December. He admits that, even in the absence of inclement weather, the new construction would have taken at least 120 to 180 days. There is nothing in the record to show that claimant's purchase of land for new construction was anything other than his personal choice. The record does not suggest that claimant chose new construction because of a shortage of suitable existing housing at his new station. Therefore, this case is unlike Donohue or Joneikis.

Furthermore, the FMD correctly noted that the State Executive Director's positive recommendation of April 9 as to the third extension omitted the important fact that claimant had received an appraisal from the relocation services program contractor on March 10. Claimant has not demonstrated that between March 10 and March 16 he would have been unable to purchase suitable existing housing at his new station. In any event, as noted above, claimant had made the decision to pursue new construction the previous December. Since the agency's reasons for denying this portion of the claim are not arbitrary and capricious, but are soundly based, the Board denies this portion of the claim.

Incurred expenses of selling the residence at the old station

Regarding the incurred expenses, the agency now suggests that it would be willing to pay claimant the pro-rata share of those expenses if claimant provides the requested sale information. We sustain the denial of the claim, but on different grounds than that articulated by the agency to the Board. In its internal e-mail message of July 10, an agency official concluded that claimant was not entitled to direct reimbursement of relocation expenses since he had used the services of a relocation services program contractor. The FTR provides that "if you use a contracted-for relocation service that is a substitute for [the] reimbursable relocation allowance, you will not be reimbursed for the relocation as well." 41 CFR 302-12.5. This agency official was correct. The Board denies this portion of the claim.

ANTHONY S. BORWICK
Board Judge