

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 10, 2004

GSBCA 16334-RELO

In the Matter of DAVID S. REINHOLD

David S. Reinhold, Riverdale, MD, Claimant.

Jeanne DiGange, Authorized Certifying Officer, Certification and Disbursement Section, National Finance Center, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

DeGRAFF, Board Judge.

In some circumstances, an employee may need to occupy temporary quarters even after the employee purchases permanent quarters. An agency cannot refuse to reimburse an employee after the employee incurs an expense the agency properly authorized the employee to incur.

Background

In April 2003, the United States Department of Agriculture (USDA) issued a travel authorization in connection with its transfer of David S. Reinhold from one permanent duty station to another. USDA authorized Mr. Reinhold to make a house hunting trip to his new duty station at the agency's expense, which he did. Mr. Reinhold found a house he wished to purchase and completed the purchase in late June. He reported for duty at his new duty station in mid-July.

When Mr. Reinhold and his family moved to his new duty station, they did not move into their newly-purchased house because it needed extensive repairs and renovation. USDA describes the house as "uninhabitable." USDA's travel authorization provided the agency would reimburse Mr. Reinhold for sixty days of temporary quarters subsistence expenses (TQSE) and would pay for the temporary storage of his household goods. Mr. Reinhold and his family moved into temporary quarters in mid-July and placed their household goods in temporary storage. He and his family remained in temporary quarters until the end of August, when they moved into their repaired and renovated house.

Mr. Reinhold submitted a claim to USDA for reimbursement of his TQSE. USDA has not paid the claim, however, because it has some doubts as to whether it should do so.¹ Pursuant to 31 U.S.C. § 3529 (2000), USDA asks us whether Mr. Reinhold can be reimbursed for TQSE even though he purchased a house before he reported for duty at his new duty station and, if so, whether USDA may reimburse Mr. Reinhold for TQSE until his uninhabitable house was made habitable. USDA also asks whether an agency can refuse to reimburse an employee after he incurs an expense the agency authorized him to incur.

Discussion

According to statute, when the Government transfers an employee from one permanent duty station to another in the interest of the Government, the agency has the authority to pay the subsistence expenses the employee incurs while occupying temporary quarters, provided certain requirements are met. 5 U.S.C. § 5724a(c) (2000). The Federal Travel Regulation implements the statute. When Mr. Reinhold reported for duty at his new duty station, the regulation said the purpose of a TQSE allowance was to reimburse an employee reasonably and equitably for subsistence expenses incurred when it was necessary for the employee to occupy lodging obtained for the purpose of temporary occupancy. 41 CFR 302-6.1, -6.3 (2003). The regulation sets out several conditions for obtaining reimbursement, none of which is at issue here. 41 CFR pt. 302-6. The regulation explains the agency is supposed to administer the TQSE allowance to ensure it is used only for so long as necessary until the employee can move into permanent residence quarters. 41 CFR 302-6.300.

USDA can reimburse Mr. Reinhold for TQSE even though he purchased a house at his new duty station before he reported for duty there. Mr. Reinhold's purchase of a house did not disqualify him from receiving reimbursement for TQSE. As we have recognized in resolving other claims, there are circumstances in which an employee needs to occupy temporary quarters even after purchasing permanent quarters. Scott E. English, GSBCA 15650-RELO, 02-1 BCA ¶ 31,821 (employee had to allow seller to remain in house for several months after purchase); Steven F. Bushey, GSBCA 15289-RELO, 01-1 BCA ¶ 31,291 (employee had to largely demolish and rebuild house). Here, the quarters Mr. Reinhold and his family occupied were obtained for the purpose of temporary occupancy, and it was reasonable and necessary for him to incur expenses for temporary quarters because he was not able to move into his permanent quarters due to the condition of those quarters. If Mr. Reinhold had been able to move into his house and had simply chosen not to do so, USDA could legitimately decide his occupancy of temporary quarters was neither reasonable nor necessary. However, based upon the facts presented here, Mr. Reinhold had no option except to occupy temporary quarters and he can be reimbursed for his TQSE.

USDA can reimburse Mr. Reinhold for TQSE until his uninhabitable house was made habitable. Mr. Reinhold spent fewer days in TQSE than authorized by USDA, and USDA has not suggested Mr. Reinhold could have occupied his new house any sooner than he did.

¹ USDA paid for the temporary storage of Mr. Reinhold's household goods.

There is no statutory or regulatory barrier to USDA reimbursing Mr. Reinhold for the TQSE he incurred.

In answer to USDA's final question, an agency cannot refuse to reimburse an employee after the employee incurs an expense the agency properly authorized the employee to incur:

As we have previously held, an agency may not exercise its discretion to authorize a transferred employee to incur reimbursable expenses and then, after the expenses are incurred, deny the authorized reimbursement. Bart J. Dubinsky, GSBCA 14546-RELO, [98-2 BCA ¶ 29,840]; Cheryl A. Cadwell, GSBCA 14148-RELO, 97-2 BCA ¶ 29,066; John Patrick Pede, GSBCA 13862-RELO, 97-2 BCA ¶ 29,023.

Elizabeth A. Hair, GSBCA 14285-RELO, 98-2 BCA ¶ 29,914.

In summary, provided the amounts claimed by Mr. Reinhold are otherwise acceptable, USDA should pay his claim for reimbursement of TQSE.

MARTHA H. DeGRAFF
Board Judge