

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 18, 2004

GSBCA 16339-RELO

In the Matter of PERRY F. GAYALDO

Perry F. Gayaldo, Silver Spring, MD, Claimant.

R.J. Dominic, Director, Finance Office/Comptroller, Finance and Administration, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Germantown, Maryland, appearing for Department of Commerce.

BORWICK, Board Judge.

Claimant, an employee of the Department of Commerce, National Oceanic and Atmospheric Administration (agency), seeks reimbursement of an additional \$879.76 for the first ten days he spent in temporary quarters at his new duty station, after a permanent change of station (PCS) transfer, as if he were on a househunting trip.

Claimant may not be reimbursed for his first ten days in temporary quarters as if he were on a househunting trip. The agency properly applied the provisions of the Federal Travel Regulation (FTR) in reimbursing claimant at the temporary quarters subsistence expenses (TQSE) rate for those days in temporary quarters.

Background

On or about July 21, 2003, the agency authorized claimant a PCS transfer from Seattle, Washington, to Silver Spring, Maryland. The authorization stated that claimant's contemplated period of travel was to commence on September 2 and to end on September 12. The authorization also granted claimant a househunting trip from August 24 to September 2 and subsistence in temporary quarters not to exceed sixty days.¹

¹ The agency also authorized reimbursement of real estate transaction expenses, reimbursement of the miscellaneous expense allowance, shipment of household goods, and temporary storage of household goods not to exceed ninety days. These matters are not in dispute.

Claimant states that "my duty station was to change from Seattle, Washington to Silver Spring, Maryland on 15 September." We assume claimant means that his reporting date at his new duty station was September 15. Nevertheless, both parties agree that, for administrative reasons, claimant's duty reporting date was moved back to September 30.

According to claimant's travel voucher and documents attached to the travel voucher, claimant, accompanied by his spouse, began his PCS trip by car on August 27 and reached Niagara Falls, New York, on September 3. According to those same documents, from September 8 claimant traveled on temporary duty from Hartford, Connecticut, to Texas and returned from temporary duty on September 11, apparently to Hartford, Connecticut.

Claimant and his spouse ended their en-route PCS travel, reaching Silver Spring, Maryland, on September 14. Upon arriving in Silver Spring, claimant and his spouse checked into the Holiday Inn, Silver Spring and remained there through September 23. Claimant says that during this period, he and his spouse looked for and found a house. They closed on its purchase on October 31. The agency deemed claimant to be in temporary quarters and granted claimant reimbursement of TQSE for the period September 14 through September 23.

Claimant maintains that he performed househunting from September 14 through September 23 and should have been reimbursed at the Washington, D.C., locality rate as if he were on a househunting trip, even though he and his spouse had completed en-route travel to his permanent duty station. Claimant seeks additional reimbursement of \$879.76, which is the difference between ten days' reimbursement at the locality rate and ten days' reimbursement at the standard continental United States (CONUS) rate, which the agency paid him for TQSE.

Claimant states that he and his spouse could not take a separate househunting trip before commencing his PCS travel because a separate trip would have meant flying between Seattle, Washington, and Washington, D.C. His spouse's medical condition at the time made flying risky for her. Claimant argues he is entitled to be reimbursed as if he were on a househunting trip starting on September 14 because "I was told that as long as the househunting effort was conducted prior to my new duty station date, it would be allowed." The agency maintains that under the FTR, to be entitled to househunting trip expenses claimant must take the househunting trip in advance of en-route PCS travel and that claimant did not do so. The agency maintains that claimant and his spouse entered into temporary quarters on September 14 when they completed their en-route PCS travel and that the agency has properly reimbursed claimant for TQSE for the period September 14 through September 23.

Discussion

The FTR defines a househunting trip as "a trip made by the employee and/or spouse to your new official station locality to find permanent living quarters to rent or purchase." 41 CFR 302-5.1 (2003). The allowance for the househunting trip is intended to "facilitate and expedite the employee's move from your old official station to your new official station and to lower the Government's overall cost for the employee's relocation by reducing the amount of time an employee must occupy temporary quarters." 41 CFR 302-5.2. The agency determines when it is in the Government's interest to authorize an employee to take a househunting trip and the procedures the employee must follow if it is authorized. 41 CFR

302-5.5. The agency may authorize one round trip for the employee and the spouse, or either, in connection with a particular transfer. 41 CFR 302-5.7, -5.8. In its question-and-answer format, the FTR provides that an employee will receive a househunting trip allowance if:

- (a) Your agency authorized you to perform a househunting trip in advance of the travel (the agency must specify the mode of transportation and the period of time allowed for the trip);
- (b) You have signed a service agreement;
- (c) Your agency has established a date, and informed you of, the date you are to report to your new official station; and
- (d) You meet any additional conditions the agency has established.

41 CFR 302-5.6. The FTR also provides that the employee must complete the househunting trip no later than the day before he reports to his official station. 41 CFR 302-5.12.

This portion of the FTR entitles a transferred employee to be reimbursed for a househunting round trip separate from the PCS travel in order both to ease the employee's transfer and to reduce the Government's temporary quarters reimbursement expense. However, the agency must authorize the employee to perform a househunting trip in advance of the travel, in accordance with 41 CFR 302-5.6(a). Because the FTR contemplates a separate househunting trip, the phrase "in advance of travel" refers to a househunting trip performed in advance of the PCS en-route travel. The employee must also meet any conditions the agency has established for taking the househunting trip in accordance with 41 CFR 302-5.6(d). It is true that the FTR establishes one day before the duty reporting date as the latest date when any househunting trip must be completed. But that provision does not negate the other requirements of the FTR to qualify for reimbursement of a househunting trip.

Here, the agency authorized claimant to take a separate househunting trip to the Washington, D.C., area between August 24 and September 2. Understandably, claimant at that time chose not to take a joint househunting trip with his spouse, since flying would have posed a medical risk to her. Claimant, however, could have taken an early househunting trip alone and shared the knowledge gleaned from that trip with his spouse.

Claimant, however, did not take an advance househunting trip; instead, he completed his en-route travel with his spouse and arrived at his new duty station. The fact that claimant spent a period of time in temporary quarters engaged in househunting activities does not make his stay in temporary quarters a househunting trip reimbursable under the FTR.

The General Accounting Office (GAO), our predecessor in deciding these claims, held many years ago that when an employee reported for duty at his new duty station earlier than scheduled for the purpose of performing a househunting trip, the employee was entitled to reimbursement at the rate applicable for a househunting trip, not to exceed the number of

days authorized for the househunting trip. Huai Su, B-215701 (Dec. 3, 1984); Gary E. Pike, B-209727 (July 12, 1983). Those cases construed versions of the FTR no longer in effect and the GAO did not consider or construe any provision of the FTR similar in substance to 41 CFR 302-5.6(a). Additionally, unlike Su and Pike, here claimant did not report for duty earlier than scheduled for the express purpose of taking a househunting trip.

Claimant says he was given erroneous advice that househunting trip reimbursement would be allowed if the househunting effort would be completed before his new duty station reporting date. The person who gave that advice did not fully explain the requirements of the FTR regarding reimbursement for househunting trips. Regardless, claimant's reimbursement entitlement is not enlarged by the erroneous or misleading advice of Government agents. William D. Dooley, GSBCA 16107-RELO (Sept. 26, 2003). The Board denies the claim.

ANTHONY S. BORWICK
Board Judge