



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 22, 2016

CBCA 4946-RELO

In the Matter of GEORGE PANOS

George Panos, San Diego, CA, Claimant.

Mark D. Rembert, Head, Labor/Employee Relations and Overseas Benefits/Allowances Divisions, Human Resources Office, Navy Division Europe, Africa, Southwest Asia, Department of the Navy, Naples, Italy, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

The Department of the Navy transferred George Panos from Greece to California in 2015. His orders authorized payment of a temporary quarters subsistence allowance (TQSA) for up to thirty days before leaving Greece. Mr. Panos reported for duty in California on April 6. The Navy authorized a delayed departure for his wife and children so that they could remain in Greece until the end of the school year. On July 9, movers picked up the family's household goods for shipment to California. Mr. Panos' wife and children moved to a hotel, where they lodged for five nights, and then departed for California. Mr. Panos claims entitlement to a TQSA for the cost of the hotel room in which his family stayed while awaiting transportation to his new duty station. The Navy has denied this allowance.

By statute, “[w]hen Government owned or rented quarters are not provided without charge for an employee in a foreign area,” the employee may be granted a TQSA “for a period of not more than 30 days immediately before final departure from the post after the necessary evacuation of residence quarters.” 5 U.S.C. § 5923(a)(1)(B) (2012). This period “may . . . be extended for not more than 60 additional days if the head of the agency concerned or his designee determines that there are compelling reasons beyond the control of the employee for the continued occupancy of temporary quarters.” *Id.* § 5923(b).

Congress gave the President the authority to issue regulations implementing this statute, 5 U.S.C. § 5922(c), and the President has delegated this authority to the Secretary of State. Exec. Order No. 10,903, § 2, *reprinted as amended in* 5 U.S.C. § 5921 app. at 1071-72. The Secretary of State has exercised the authority by promulgating sections 120 through 129 of the Department of State Standardized Regulations (DSSR), which label the allowance provided by statute as TQSA. The Department of Defense follows the TQSA rules established in the DSSR. *William P. McBee, Jr.*, CBCA 943-RELO, 08-1 BCA ¶ 33,760.

The DSSR prescribes when TQSA preceding final departure from a foreign post may begin and end. In section 124.1, Commencement, the regulation states:

If the head of agency determines that it is necessary for an employee to occupy temporary quarters immediately preceding final departure from the post, the grant of a [TQSA] may commence as of the latest of the following dates:

- a. the date following the necessary vacating of government owned or leased quarters or termination of the living quarters allowance grant (exception: [not applicable here]);
- b. the date expenditures for temporary lodging are first incurred following the necessary vacating of residence quarters.

In section 124.2, Termination, the DSSR states:

A [TQSA] granted immediately preceding the employee's final departure from the post shall terminate as of the earliest of the following dates:

- a. on the 31st day following commencement of the grant unless an extension is authorized . . . by the head of agency;
- b. the date expenses for temporary lodging are no longer incurred . . . ;
- c. the date of the employee's departure, or the date of departure of family members if later, under transfer orders. Where the employee's departure for transfer precedes that of family members, the [TQSA] at the previous post shall not extend beyond the date preceding the date of the arrival of the new employee at the new post; or
- d. the date of separation from a Federal agency.

How to read these provisions in concert with each other appears at first blush to be a problem. Under DSSR 124.1, the period of the Panos family's eligibility for TQSA began on the date expenditures for temporary lodging were first incurred following the necessary vacating of residence quarters. That day was July 9. (The other alternative for the beginning of the period is not applicable to the situation before us.) Under DSSR 124.2, the date on which the period of eligibility ended is not entirely clear. Subsection (c) of this section appears to be the provision applicable to the Panos family's situation. The first portion of this subsection would have the period end on the date of departure of the family members, which was later than the date of departure of the employee, as permitted under the employee's travel orders. That day was July 14. The second portion of subsection (c) would have the period of eligibility end on the day before Mr. Panos arrived at his new post in California, which was April 5.

The principal purpose of statutes authorizing the Government to pay expenses which are associated with the relocation of its employees is to "provid[e] additional benefits and allowances, so that employees will not have to incur financial losses when transferred at the request of the Government." *Edward I. Wexler*, GSBCA 16410-RELO, 04-2 BCA ¶ 32,732 (quoting S. Rep. No. 89-1357 (1966), reprinted in 1966 U.S.C.C.A.N. 2564, 2565); *Jeffrey R. Jenkins*, GSBCA 15339-RELO, 00-2 BCA ¶ 31,066 (same); *Gordon D. Giffin*, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100 (applying principle to TQSA governed by DSSR). This purpose can be achieved by applying to the Panos family's situation the first part of DSSR 124.2.c, which is consistent with DSSR 124.1 (period begins on July 9 and ends on July 14), rather than the second part of DSSR 124.2.c, which would create an impossibility when read with DSSR 124.1 (period begins on July 9 and ends on April 5). Given the otherwise inconsistency in result, the final sentence of 124.2.c must be read to end the period of eligibility for TQSA for the employee, but not for his family.

We therefore conclude that Mr. Panos is entitled to a TQSA for the five days his wife and children stayed in a hotel in Greece after their household goods were packed and before they left for California. See *Richard H. Whittier*, GSBCA 16538-RELO, 05-1 BCA ¶ 32,926 (allowing TQSA for transferred employee and his family when both were in temporary quarters after employee arrived at new duty station and before family left old station on delayed departure).

STEPHEN M. DANIELS
Board Judge