



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 10, 2024

CBCA 8157-RELO

In the Matter of BYRON L.

Byron L., Claimant.

Ilona M. Keller, Human Resources Specialist, Civilian Personnel Directorate, Department of the Army, APO Area Europe, appearing for Department of the Army.

ZISCHKAU, Board Judge.

Claimant, a civilian employee of the Directorate of Public Works (DPW) of the Department of the Army, seeks reimbursement of approximately \$8229 in temporary quarters subsistence allowance (TQSA) expenses for March 4 through April 15, 2024, as an extension request to the ninety days of TQSA reimbursements he previously received. He states that there were compelling circumstances beyond his control that prevented him from moving into his new home prior to April 15. Citing Army in Europe Regulations (AER) 690-500.592 (Sept. 2018), the agency denied the extension request solely on the basis that it read this provision as limiting reimbursement of the employee beyond ninety days of TQSA using only the living quarters assistance (LQA) rate. The agency's interpretation of AER 690-500.592, however, excludes any agency discretion to consider whether an extension of TQSA is warranted based on compelling circumstances. Because this interpretation is contrary to 5 U.S.C § 5923 (2018), Department of State Standardized Regulations (DSSR) 122.2 and 123.34, Federal Travel Regulation 302-6.105 (41 CFR 302-6.105 (2023)), and our decision in *David C. Scheivert*, CBCA 6657-RELO, 20-1 ¶ 37,577, we remand to the agency for consideration of claimant's extension request.

Background

In early December 2023, the claimant was to report to his new duty station in Germany as a newly hired general engineer. The claimant relocated from his residence in

Georgia to his duty station in Dülmen, Germany. Following his arrival, the claimant received authorization and was paid for ninety days of TQSA, totaling \$16,718.31.

On March 22, 2024, the claimant submitted an extension request of his TQSA to cover an additional period from March 4 to April 14, 2024. In his request, the claimant mentioned the difficulties of completing a home purchase in a competitive housing market during the holiday season within the ninety-day period. The claimant signed a sales agreement on February 10, 2024, and signed a purchase contract on March 13, 2024. According to the claimant, he was not permitted to move into the home until April 15, 2024. The garrison's commander approved claimant's request for a TQSA extension on March 22, 2024, and the request was then submitted to the Army's Civilian Human Resources Agency (CHRA). On May 23, 2024, the CHRA denied the TQSA extension request based on AER 690-500.92, stating that the regulation "does not permit an extension of the [TQSA] allowance" beyond ninety days. On July 23, 2024, the claimant filed his claim here.

In its response to the claim, the agency clarified that, while 5 U.S.C. § 5923 permits agencies to extend the allowance, the DSSR "emphasizes that TQSA is a discretionary allowance and not an entitlement."

Discussion

Under section 5923 of the Overseas Differentials and Allowances Act, 5 U.S.C. §§ 5921–5928, agencies are authorized to reimburse employees for relocation expenses related to housing costs when the Government does not provide it free of charge. In relevant part, it reads:

When Government owned or rented quarters are not provided without charge for an employee in a foreign area, one or more of the following quarters allowances may be granted when applicable:

(1) A temporary subsistence allowance for the reasonable cost of temporary quarters (including meals and laundry expenses) incurred by the employee and his family—

(A) for a period not in excess of 90 days after first arrival at a new post of assignment in a foreign area or a period ending with the occupation of residence quarters, whichever is shorter

5 U.S.C. § 5923(a). Additionally, the statute describes when an extension is permissible and for how long:

The 90-day period under subsection (a)(1)(A) . . . 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) (emphasis added).

For civilian employees, this statute has been implemented through DSSR 120. *See William P. McBee, Jr.*, CBCA 943-RELO, 08-1 BCA ¶ 33,760, at 167,115-16. Pursuant to DSSR 122.2 and 123.34, the Department of Defense Instructions (DoDI) delegated the authority to the agency as to whether to approve or deny TSQA extensions “due to compelling reasons beyond the control of the employee.” DoDI 1400.25, vol. 1250 ¶ 4.a(1)(e) (Feb. 2012). The agency interpreted that grant of authority through internal guidance, AER 600-500.592, which notes in paragraph 12(a)(2):

If the employee has not yet moved into permanent quarters when arrival TQSA ends, LQA will replace TQSA for lodging accommodations at the rate of applicable to the post of assignment.

Id. ¶ 12(a)(2). In justifying its current denial, the agency asserts that, pursuant to its delegated authority, it *may* exercise the discretion prescribed in DSSR, but it is not obligated to do so. However, as we explained in *Scheivert*, an agency cannot prohibit exercising discretion in determining whether to grant a TQSA extension request. 20-1 BCA at 182,460. A flat prohibition undermines the purpose of 5 U.S.C. § 5923, which is to allow an agency to consider an allowance extension “based on the *assessment of specific facts and not on its pre-decided policy.*” *Id.* (quoting *Charles A. Houser*, CBCA 2149-RELO, 11-1 BCA ¶ 34,769, at 171,113) (emphasis added).

The agency neither mentioned nor addressed *Scheivert*, which is controlling here. Similar to the claim here, the civilian employee in that case requested an extension of TQSA for an additional nineteen days while he waited for on-base housing. Without *any* consideration of the compelling reasons provided that were beyond employee’s control (namely, waiting for an on-base housing assignment), the CHRA summarily denied the claimant’s request. *Scheivert*, 20-1 BCA at 182,459. The agency, relying on the same AER provision raised here, maintained that TQSA extensions were prohibited beyond ninety days. However, as we noted in that decision, the agency’s interpretation of AER 690-500.592 “that it *may* systematically prohibit extensions . . . contradicts Congress’ clear intent to allow for extensions up to sixty additional days in situations where the agency finds compelling reasons for the delays.” *Id.* at 182,460 (emphasis added); *see also Houser*, 11-1 BCA at 171,113; 5 U.S.C. § 5923. “[A]gency policies and procedures, written or unwritten, . . . prohibit[ing] extension requests are inconsistent with the intent of 5 U.S.C. § 5923 and therefore contrary to law.” *Scheivert*, 20-1 BCA at 182,460 (citing *Peter E.*

Godfrey, CBCA 4940-RELO, 16-1 BCA ¶ 36,250; *Kevin D. Reynolds*, CBCA 2201-RELO, 11-1 BCA ¶ 34,756). The agency may not skirt its statutory duty to exercise discretion in deciding TQSA extensions, but must conduct a meaningful examination of the facts supporting claimant's position that there were compelling reasons beyond his control that prevented him from moving into his new housing prior to April 15, 2024.

Decision

We remand to the agency for reconsideration of claimant's request for an extension of TQSA under the criteria stated above.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge