



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 19, 2007

CBCA 695-RELO

In the Matter of DONALD L. SCHAFFER

Donald L. Schaffer, Delanco, NJ, Claimant.

Judy Hughes, Defense Finance and Accounting Service, Columbus, OH, appearing for the Department of Defense.

FENNESSY, Board Judge.

Background

Claimant, Donald L. Schaffer, is a civilian employee of the Defense Logistics Agency (DLA). On August 30, 2006, DLA authorized a permanent change of station (PCS) for Mr. Schaffer from Pearl Harbor, Hawaii, to Philadelphia, Pennsylvania. DLA's orders, as amended, authorized reimbursement to Mr. Schaffer of actually incurred temporary quarters subsistence expenses (TQSE) for himself and his wife for a total of sixty-six days. Claimant and his wife occupied temporary quarters in Hawaii from September 26 to October 1, and began the occupancy of temporary quarters in the Philadelphia area on October 2, 2006. From the record, it appears that this claim involves only the time spent in temporary quarters in the Philadelphia area.

The Defense Finance and Accounting Service (DFAS) calculated claimant's reimbursement for TQSE in the Philadelphia area based upon the standard per diem rate for locations within the continental United States (CONUS) of \$99 pursuant to the Federal Travel Regulation (FTR) 302-6, subpart B. Claimant believes that he should be reimbursed at the higher per diem rate for New Jersey, where he occupied temporary quarters based upon FTR 301-11.303, which provides that the maximum amount an employee on temporary duty (TDY) may be reimbursed under the actual expense method of reimbursement is limited to 300% of the applicable, maximum per diem rate. DFAS declined to reimburse Mr. Schaffer for the difference of \$3615.90, noting that the provision

he referenced applied to TDY travel expenses and not to actually incurred TQSE in connection with a PCS.

Mr. Schaffer has requested that the Board review the agency's determination. He argues that, had he been in a TDY status, he could be reimbursed actual expenses of up to 300% of the maximum allowable per diem rate pursuant to FTR 301-11.30, -11.303, because the Government lodging rate exceeded the allowable reimbursement. He complains that the failure of the regulations to provide the same recourse for employees in PCS status constitutes an unfair double standard. For the reasons discussed below the agency properly denied the claim.

Discussion

When the Government transfers an employee from one permanent duty station to another in the interest of the Government, the agency has 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 FTR implements the statute; the Joint Travel Regulations (JTR), applicable to civilian employees of the Department of Defense, supplement the FTR. *Donald D. Fithian, Jr.*, GSBCA 16712-RELO, 06-1 BCA ¶ 33,204. The regulations in effect at the time claimant reported to the new duty station govern the reimbursement of his expenses. 41 CFR 302-2.3 (2006) (FTR 302-2.3); *Monika Mayr*, GSBCA 16685-RELO, 05-2 BCA ¶ 33,106.

Chapter 302 of the FTR applies to relocation expenses of employees who are authorized a PCS. It is a matter of agency discretion whether to authorize a TQSE allowance for PCS expenses. 41 CFR 302-6.6; JTR C5362; *Donald D. LaChance*, GSBCA 16911-RELO, 06-2 BCA ¶ 33,396. If a TQSE allowance is authorized, the FTR provides that, under the actual expense method of TQSE reimbursement, the agency will pay the actual TQSE incurred, provided the expenses are reasonable and do not exceed the maximum allowable amount. The maximum allowable amount is the actual daily amount multiplied by the number of days TQSE is authorized. The actual daily amount for Mr. Schaffer was the applicable per diem rate and, for his wife, 75% of the applicable per diem rate, for the first 30 days. Additional days are reimbursed at a reduced percentage of the applicable per diem rate. 41 CFR 302-6.100; *Kenneth R. Wheeler, Jr.*, GSBCA 16630-RELO, 05-2 BCA ¶ 33,054. The applicable per diem rate for the time spent in New Jersey is the standard CONUS (Continental United States) rate which, at the relevant time, was \$99. 41 CFR 302-6.102; JTR C5360, C5372-A.2a. The JTR expressly state that expenses

exceeding the total authorized TQSE amount are the financial responsibility of the employee. JTR C5370-C .

Chapter 301 of the FTR pertains to TDY travel expenses for employees traveling on official business. 41 CFR 301-1.3. As stated above, it provides that the maximum amount reimbursable under an actual expense reimbursement of a TDY claim is limited to 300% of the applicable maximum per diem rate. 41 CFR 301-11.303. Claimant believes it is unfair that the more flexible TDY rules set forth in Chapter 301 for obtaining an increase in the amount of allowable expenses do not apply to his claim.

In support of his position, claimant seems to suggest that, because there are references in the relocation allowances section of the FTR to certain TDY regulations, all of the TDY regulations should apply to his relocation claim. Specifically, Mr. Schaffer relies upon FTR 302-6.12, which states: “For actual TQSE reimbursement, you must document TQSE by itemizing each expense and providing receipts as required by §§ 301-11.25, 301-11.306 and 301- 52.4(b) of this title.” The referenced sections describe the TDY expenses that must be itemized and state that receipts must be provided for lodging and any expense over \$75. Thus, the provision in Chapter 302-6 for TQSE incurred in connection with a PCS incorporates the TDY requirements of Chapter 301 for documenting expenses. Similarly, the drafters of the regulations incorporated the rules for TDY travel from Chapter 301 into the provision of Chapter 302-4 concerning PCS travel expenses. *See* 41 CFR 302-4.100. The drafters, however, did not incorporate into the TQSE provisions of Chapter 302-6 the TDY provisions of Chapter 301-11.30, -11.303 for increasing reimbursement of expenses up to 300% of the applicable per diem. Therefore, those TDY provisions are not applicable to Mr. Schaffer’s claim.

Although not reflected in Mr. Schaffer’s submissions, the agency report indicates that he also asked whether he may submit a supplemental claim to recoup lodging taxes, laundry/dry cleaning, and pressing of clothes as miscellaneous expenses pursuant to 41 CFR 301-11.27. That provision of the FTR states that lodging taxes are not included in the per diem rate for TDY travel and are reimbursable as miscellaneous expenses. Laundry, dry cleaning, and pressing of clothes are reimbursable to TDY travelers as miscellaneous expenses pursuant to 41 CFR 301-11.31. Chapter 302-6 does not contain, or incorporate by reference, the provisions of Chapter 301 permitting recovery of the type of miscellaneous expenses claimed by Mr. Schaffer.¹ Consistent with the FTR, JTR C5370-B provides that

¹ Mr. Schaffer’s orders authorized reimbursement of “miscellaneous expenses” in connection with his PCS. However, the miscellaneous expenses authorized by Chapter 302 are costs associated with discontinuing a residence at the old duty station and establishing

actually incurred TQSE daily allowable expenses are inclusive of temporary lodging, including taxes; meals and/or groceries; fees and tips incident to meals and lodging; laundry; and cleaning and pressing of clothes. These expenses, therefore, are not separately reimbursable.

Whether the differences between the amount of allowable reimbursement of expenses for TDY and PCS are unfair is a policy question which is for the Congress and the regulation-writers to decide. As a quasi-judicial tribunal, we are limited to interpreting and applying the law as it exists. *George Span*, GSBCA 13728-RELO, 97-1 BCA ¶ 28,859.

Decision

The agency has correctly interpreted and applied the regulations. The claim is denied.

EILEEN P. FENNESSY
Board Judge

a residence at the new duty station such as disconnecting or connecting appliances and cutting and fitting draperies and carpets. 41 CFR 302-16.1. They are not expenses related to TQSE. *Monika Mayer*, GSBCA 16685-RELO, 05-2 BCA ¶ 33,106.