



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 26, 2007

CBCA 898-RELO

In the Matter of STEVEN L. MEINTS

Steven L. Meints, Fort Belvoir, VA, Claimant.

Judy Hughes, Standards and Compliance, Finance Mission Area - Travel Policy, Columbus Center, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

Once an employee begins his period of eligibility for actually-incurred temporary quarters subsistence expenses (TQSE), the period may be interrupted by days on which the employee is on temporary duty, but not by days on which he is on annual leave.

Background

The Department of the Army reassigned Steven L. Meints from Hawaii to Virginia by orders issued in September 2006. In doing so, the Army authorized payment of actually-incurred TQSE for a period of up to sixty days.

The orders contemplated that Mr. Meints would report to his new duty station on or about October 29. After issuing the orders, however, officials at the Virginia facility asked him to choose one of two other reporting dates -- October 15 or December 10. Mr. Meints selected the earlier date, and on September 27, the facility issued a standard form 50 (Notification of Personnel Action) which stated that the transfer would be effective on October 15.

As October 15 approached, it became apparent that Mr. Meints could not complete his work in Hawaii by that date. Officials at the Virginia facility decided to put Mr. Meints in a temporary duty status for the period from October 14 to 22 to allow him to remain in Hawaii and finish his work there.

Mr. Meints says that he was on annual leave from October 23 through November 5 and reported to his new duty station in Virginia on November 5. He actually traveled from Hawaii to Colorado on October 28 and from Colorado to Virginia on November 5. The Defense Finance and Accounting Service (DFAS) notes that if Mr. Meints had traveled from Hawaii directly to Virginia, the trip could have been made on November 4 and 5. Thus, DFAS says, as to the running of Mr. Meints' eligibility for TQSE, the "clock [was] stopped for constructed en route travel by commercial air from Hawaii to Virginia" on November 4.

Mr. Meints moved into permanent quarters in Virginia on December 7.

Discussion

By regulation, reimbursement of actually-incurred TQSE is capped at a specified rate for each of the first thirty days an employee is living in temporary quarters and eligible for the benefit, and at three-quarters of that rate for each additional day he remains eligible. 41 CFR 302-6.100 (2006); JTR C5372-A.2.c.-d. If the period of Mr. Meints' eligibility for TQSE was tolled while he was on temporary duty, the first thirty days of his eligibility will be extended, so the proportion of time he was in temporary quarters which will qualify for reimbursement at the higher rate will be increased. If his period of eligibility was tolled while he was on annual leave, the impact will be similar.

The Federal Travel Regulation (FTR) provides that an employee's "authorized period for claiming actual TQSE reimbursement is measured on consecutive days, and once begun, normally continues to run whether or not [the employee] occup[ies] temporary quarters." 41 CFR 301-6.106; *see also* JTR C5366-B.2. The regulation continues:

[The employee] may, however, interrupt [his] authorized period for claiming actual TQSE reimbursement in the following instances:

- (a) For the time allowed for en route travel between the old and new official stations;
- (b) For circumstances attributable to official necessity such as an intervening temporary duty assignment or military duty; or

- (c) For a non-official necessary interruption such as hospitalization, approved sick leave, or other reason beyond [the employee's] control and acceptable to [his] agency.

Id. As to the last of these three instances, the Joint Travel Regulations (JTR), which implement and supplement the FTR with applicability to civilian employees of the Department of Defense (DoD), make clear that the kind of approved leave which may toll the running of a period of eligibility for actual TQSE is "sick but not annual." JTR C5366-B.2.c.

The regulation specifically tolls the running of a TQSE eligibility period for "an intervening temporary duty assignment." Following this provision, DoD initially reimbursed Mr. Meints for his lodging and meals and incidental expenses for the days from October 14 to 22, while he had been placed on temporary duty in Hawaii. DFAS is now concerned, however, that Mr. Meints may not have been appropriately on temporary duty on those days because at the time, he was still at his old duty station in Hawaii. Under the FTR, the effective date of an employee's transfer is "the date on which [he] report[s] for duty at [his] new . . . official station." 41 CFR 302-2.4. DFAS questions whether, because Mr. Meints had not yet reported to Virginia in October, his duty station was in Hawaii during that month. An employee may not perform temporary duty at his official station. *Id.* 301-11.1(a). If Mr. Meints' duty station was in Hawaii, he could not have been performing temporary duty there.

DFAS's concerns are for the most part alleviated by reference to the record in this case. The Army officially transferred Mr. Meints to the Virginia location, effective on October 15, and it officially placed him on temporary duty status for the period from October 14 to 22. Just as it is possible to constructively determine the dates of travel from one location to another when the travel does not occur as planned, as DFAS has done with regard to Mr. Meints' travel, it is possible to constructively determine the date of transfer where an agency decides that its best interest lies in reassigning an employee even when he cannot physically appear for duty at a new official station. Based on the date of the transfer, we conclude that Mr. Meints was constructively transferred to Virginia on October 15. He could permissibly be placed on temporary duty in Hawaii, consequently, from October 15 to 22 (but not on October 14, when his official station was still in Hawaii).

The FTR and the JTR also speak definitively to the question of tolling Mr. Meints' period of TQSE eligibility while he was on annual leave: This is not permitted. From October 23 through November 3, while he was on annual leave but not yet constructively traveling from Hawaii to Virginia, his period of eligibility continued to run -- even though he could not be reimbursed for his living expenses. *See Joseph S. Mikac*, CBCA 822-RELO (Nov. 16, 2007) (as to continuous nature of period of eligibility).

We conclude that Mr. Meints' period of eligibility for TQSE ran as follows:

- From October 10 through October 14, while he was in temporary quarters at his old duty station in Hawaii (five days);
- From October 23 through November 3, while he was on leave (twelve days);
- From November 5 through December 6, while he was in temporary quarters at his new duty station in Virginia (thirty-two days).

The first thirty days of his period of eligibility ended on November 17. We also conclude that the Army has properly reimbursed Mr. Meints for the lodging and meals and incidental expenses he incurred while on temporary duty from October 15 to 22.

In responding to DFAS's statement of position, Mr. Meints had added to his claim elements regarding parking charges, overtime pay, and leave. We do not address any of these matters here. Whether the parking charges are reimbursable is being considered by DFAS, and cannot be put before us until after DFAS has made a determination. Whether Mr. Meints is entitled to the overtime pay and leave he seeks is also for DFAS to consider in the first instance; and if the employee disagrees with the agency's decision on those matters, the proper forum for settlement of his claim is the Office of Personnel Management, not this Board. 31 U.S.C. § 3702(a)(4) (2000).

STEPHEN M. DANIELS
Board Judge