UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 19, 2008

CBCA 1237-TRAV

In the Matter of JEANNE S.

Jeanne S., Washington, DC, Claimant.

Karyn R. Jones, Acting Chief, Accounting Section, Finance Division, Federal Bureau of Investigation, Washington, DC, appearing for Department of Justice.

DANIELS, Board Judge (Chairman).

The Federal Bureau of Investigation (FBI) requests our opinion pursuant to section 3529 of title 31, United States Code, regarding reimbursement of lodging expenses incurred by an employee while on a temporary duty (TDY) assignment. The employee is a special agent who performs criminal investigations, and to protect her identity, we refer to her only as "Jeanne S." in this decision.

Background

Ms. S. and her husband are both FBI special agents. In January 2007, Mr. S. was issued orders transferring him from Los Angeles, California, to a permanent duty station in the Washington, D.C. metropolitan area. Ms. S. did not request a common household transfer; she planned to stay in Los Angeles.

During the following month, Ms. S. learned of a Headquarters Staffing Initiative (HSI) being undertaken by the FBI. This initiative was designed to staff critical headquarters positions with experienced agents. Agents selected to participate in the program were to be given a choice between a permanent transfer to Washington or an eighteen-month temporary duty (TDY) assignment to that location. Agents who elected a permanent transfer were to receive full relocation benefits and a relocation bonus. Agents who elected the TDY option were to receive a maximum of fifty percent of the lodging per diem rate for the Washington area and seventy-five percent of the meals and incidental expenses (M&IE) per diem rate for that area. Ms. S. asked the HSI program manager whether, in light of the fact that her husband was transferring to the Washington area, she would be eligible for these benefits if she were selected for the program. The manager assured her that because she and her husband were separate entities with separate career paths, her husband's situation would have no bearing on her eligibility. Later, the manager of the FBI's Travel Advance and Payment Unit told Ms. S. that if an agent who elected the eighteen-month TDY assignment option were to purchase a house in which to live while on TDY, the agency would reimburse the agent for her mortgage costs on that house, up to the specified maximum.

In March 2007, Ms. S. was selected for the HSI program. She elected the eighteen-month TDY assignment option.

Mr. and Ms. S. signed a contract to buy a house in the Washington area. In April 2007, they traveled to Washington and began their new assignments. In May, they jointly purchased the house which they had contracted to buy.

The FBI reimbursed Mr. S., the permanently transferred employee, for allowable expenses the couple had incurred in buying the house. The agency also began reimbursing Ms. S., the temporarily-detailed employee, for mortgage interest, taxes, and utility expenses incurred in owning the house, within the maximum lodging expense prescribed for the HSI program -- fifty percent of the lodging per diem rate for the Washington area.

In June 2008, the FBI became concerned that perhaps it should not have been reimbursing Ms. S. for her lodging expenses. (Payment of a per diem allowance for M&IE is not in question.) The agency asked us whether it should continue to pay Ms. S. for lodging costs and whether it should recoup payments for lodging already made to her.

Discussion

As the FBI recognizes, this highly unusual situation does not lend itself to an easy answer. On the one hand, a line of decisions going back more than thirty years establishes that if a federal employee on temporary duty spends his nights in a residence he owns at the temporary duty location, the costs he incurs in staying in the house -- mortgage interest, property taxes, utility charges, and maintenance expenses -- are reimbursable if the house was purchased as a place to live during the temporary duty, but not if the house was purchased earlier for other reasons. *Christopher L. Andino*, CBCA 957-TRAV, 08-1 BCA ¶ 33,817; *Harriette Treloar*, GSBCA 16699-TRAV, 05-2 BCA ¶ 33,056; *Dimitri & Eugenia*

Arensburger, GSBCA 14514-TRAV, 98-2 BCA ¶ 30,055; *Donald C. Smaltz*, GSBCA 14328-TRAV, 97-2 BCA ¶ 29,311; *Robert E. Larrabee*, 57 Comp. Gen. 147 (1977). The agency was clearly thinking of this line of decisions when it agreed to reimburse agents on extended TDY assignment for these expenses and when it actually reimbursed Ms. S. for such expenses as were incurred by her.

On the other hand, the Federal Travel Regulation expressly limits reimbursement for lodging costs when an employee on TDY stays overnight with a friend or relative: "You may be reimbursed for additional costs your host incurs in accommodating you only if you are able to substantiate the costs and your agency determines them to be reasonable. You will not be reimbursed the cost of comparable conventional lodging in the area or a flat 'token' amount." 41 CFR 301-11.12(c) (2007). If Ms. S. is considered to have been staying with her relative, Mr. S., while she was on her TDY assignment, unless she can show that Mr. S. incurred additional costs in accommodating her, she may not receive any reimbursement for her lodging.

Like the FBI, we have been unable to identify any provision of statute or regulation, or any decision of any court or this Board or its predecessors in settling claims regarding travel of federal civilian employees, which addresses the unusual circumstances present here. The difficulty is that the situation does not fit neatly into either situation for which general principles have been established. Mr. and Ms. S. purchased their home in the Washington area for two purposes: as a residence for Mr. S. while he was permanently assigned in the area and as a residence for Ms. S. while she was on her TDY assignment. The mortgage interest, property taxes, utility charges, and maintenance expenses they have incurred while living in the house have been incurred for both purposes. While it is true that those expenses would have been incurred whether Ms. S. were living in the house or not, it is also true that half of the expenses are attributable to Ms. S.'s occupancy of the dwelling while on the TDY assignment.

In these circumstances, we believe that the FBI should reimburse Ms. S. for half of the mortgage interest, property taxes, utility charges, and maintenance expenses incurred for the house while she has been on her TDY assignment, up to the maximum of fifty percent of the lodging per diem rate for the Washington area. To the extent that the agency has paid her more than this amount, it may recoup the difference.

We note that this resolution should have no impact on the per diem allowance the FBI has paid Ms. S. for meals and incidental expenses while on the TDY assignment. An employee on TDY is entitled to such an allowance regardless of where he or she lodges. 41 CFR 301-11.101. Nor does this resolution have any impact on the agency's payment to Mr. S. of transaction expenses incurred in buying the house. Whether Ms. S. ever lived in the house or not, Mr. S. was eligible to receive this money because the house was purchased jointly in the names of himself (a transferred employee) and an “immediate family member” (Ms. S.). 41 CFR 302-11.101(c).

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STEPHEN M. DANIELS
Board Judge