



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 26, 2009

CBCA 1314-RELO

In the Matter of DAMON PFALMER

Damon Pfalmer, Irvine, CA, Claimant.

William E. Wiggins, Jr., Working Capital Fund Activity Manager, Employee Relocation Resource Center, Environmental Protection Agency, Cincinnati, OH, appearing for Environmental Protection Agency.

McCANN, Board Judge.

On February 10, 2009, the Board issued its decision granting claimant's claim for miscellaneous and incidental expenses (M&IE). These expenses were associated with his temporary quarters subsistence expenses (TQSE) incurred while he and his family were in temporary quarters due to his permanent change of duty station (PCS) move. Shortly thereafter, the Board received a memorandum from the Environmental Protection Agency (EPA) contesting some of the factual and legal conclusions contained in the Board's decision. The Board issued an order stating that this memorandum would be treated as a motion for reconsideration and permitting the claimant to respond. The claimant did file a response.

In our original decision, we concluded that Mr. Pfalmer was entitled to M&IE expenses for his family while they stayed in Colorado Springs, Colorado, while he was on a house hunting trip associated with his PCS move from Artesia, New Mexico, to Los Angeles, California. Since Mr. Pfalmer in his claim discussed in detail the justification for his flying in and out of Colorado Springs airport for his house hunting trip and the EPA in its response discussed the justification for the use of that airport, it seemed obvious to the Board that Mr. Pfalmer's family was staying in Colorado Springs in temporary quarters during his house hunting trip. Neither party indicated anything different. Unfortunately, we

now know, based on the parties' recent submissions, that this turns out not to have been the case.

Mr. Pfalmer and his wife went on his house hunting trip to Los Angeles from April 20 to April 29, 2008. He and his family did not go into temporary quarters until May 25, 2008. They stayed in temporary quarters until June 13, 2008. His family stayed in Artesia from May 25 to May 30, 2008, and in Colorado Springs from May 31 to June 13, 2008. Mr. Pfalmer stayed in Los Angeles the entire time. Mr. Pfalmer is claiming M&IE expenses in the amount of \$594.44 incurred by his family while they stayed in Colorado Springs from May 30 to June 13, 2008. Mr. Pfalmer has received TQSE for his stay in Los Angeles and for his family's stay in Artesia. It is only the expenses (\$549.44) incurred while his family was in Colorado Springs that are in dispute.

The following section of the Federal Aviation Administration Travel Policy (FAATP) applies:

§ 302-22.7 Where may I/we occupy temporary quarters at Government expense?

You and/or your immediate family may occupy temporary quarters at Government expense within reasonable proximity of your old and/or new official stations. Neither you nor your immediate family may be reimbursed for occupying temporary quarters at any other location, unless justified by special circumstances that are reasonably related to your transfer.

Section 302-22.7 allows TQSE if temporary quarters are "within reasonable proximity" of the employee's old or new duty station. As we indicated in the original decision, Colorado Springs, which is 500 miles from Artesia and more than 500 miles from Los Angeles, is not "within reasonable proximity" of either. Mr. Pfalmer claims that no single quarters were available in Artesia for the period of May 25 to June 13, 2008. He claims that changing quarters during this time would have been very disruptive to his family and very expensive. Apparently, he does not dispute that quarters were available at other locations near Artesia.

The question to be decided is whether under the regulations Mr. Pfalmer is entitled to M&IE for his family while they resided in Colorado Springs from May 31 to June 13, 2008. The answer is that he is not. Colorado Springs is not "within reasonable proximity" of Artesia or Los Angeles. Furthermore, adequate quarters were available "within

reasonable proximity” of Artesia in Rosewell and Carlsbad, New Mexico. Also, even if Mr. Pfalmer could not obtain lodging for the entire period at one location in Artesia, that is not such a special circumstance as to justify M&IE expenses for his family in Colorado Springs.

Decision

Since the underlying decision was based upon incorrect facts leading to an incorrect conclusion, that decision is vacated. For the above-stated reasons, the claim is denied.

R. ANTHONY McCANN
Board Judge