



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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November 17, 2009

CBCA 1573-RELO

In the Matter of RAYMOND W. MARTIN

Raymond W. Martin, APO Area Pacific, Claimant.

Anne Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**McCANN**, Board Judge

Claimant, Raymond W. Martin, a civilian project engineer with the United States Army Corps of Engineers, has asked the Board to review the agency's denial of his claim for reimbursement of temporary quarters subsistence expenses (TQSE) and real estate settlement expenses incurred in connection with his permanent change of station (PCS) from Kansas City, Missouri, to Fort Riley, Kansas.

Background

In connection with his PCS transfer, claimant was initially authorized sixty days of TQSE. Subsequently, his orders were amended to add an additional sixty days for a total of 120 days. Beginning April 22, 2008, claimant rented a house in Manhattan, Kansas, near his new duty station. Mr. Martin states that the lessor is not a friend or a relative.

Claimant submitted a request for reimbursement for TQSE for 120 days beginning on April 22, 2008. In support of his claim, claimant submitted copies of checks, with a notation in the memo portion of each that the check is for rent for the house in question. Six checks were submitted, one for \$282 for part of the month of April 2008, and five checks for \$650 for the months of May through September 2008. In addition, claimant submitted an undated memorandum signed by the lessor stating that claimant had paid a deposit of \$650 in March

2008, \$282 in rent for the month of April 2008, and \$650 in rent for the months of May and June 2008.

The Corps rejected claimant's claim for reimbursement of this TQSE lodging expense, citing paragraph C4555-B.4 of the Joint Travel Regulations (JTR), which proscribes reimbursement of lodging expenses for accommodations from non-conventional sources without an acceptable written explanation of the circumstances. Claimant submitted no written explanation. The Corps, without explanation, has also cited to JTR C4555-A, which deals with lodging location, as additional support for its position.

### Discussion

The initial question to be answered here is what is the appropriate regulation that pertains to the rental of a house when an employee is on TQSE travel. The Corps cites to JTR C4555-B.4, which states:

Lodging in Non-conventional Facilities. The cost of non-conventional lodging facilities is allowed. These facilities include college dormitories or similar facilities and rooms generally not offered commercially that are made available to the public by area residents in their homes. In these cases, a traveler must provide a written explanation of the circumstances that is acceptable to the DOD Component.

The Corps seems to assume that because the house was privately owned that it is a non-conventional facility, similar to a college dormitory, requiring a "written explanation of the circumstances that is acceptable to the DOD component." We do not think that C4555-B.4 is determinative. Additional sections of the JTR shed light on this issue. JTR C4555-B.1 deals with conventional lodging and indicates that:

Conventional Lodging. When an employee uses conventional commercial lodging facilities (hotel, motel, boarding house, etc.) the allowable lodging expense is based on the single room rate for the lodging used. For double occupancy, see par. C4555-I1. See par. C4555-G for computing the daily lodging expense when lodging is rented on a weekly or monthly basis.

Further, JTR C4555-D deals with apartments and houses:

Allowable Expenses when an Apartment, House, or Recreational Vehicle Is Rented or Used for Quarters. When an employee on TDY [temporary duty] rents a furnished/unfurnished apartment, house or recreational vehicle

(includes a mobile home, camper, camping trailer, or a self-propelled mobile recreational vehicle) for use as quarters, per diem is computed IAW [in accordance with] the provisions of par. C4553 and par. C4559 when a recreational vehicle is used for lodging. Allowable lodging expenses are . . . :

1. Apartment, house, or recreational vehicle rent (see par. C4559-B);

. . . .

In determining the daily amount of expense items which do not accrue on a daily basis such as cost for connection/disconnection of utilities, dumping fees, shower fees, cleaning charges, monthly telephone use fee, etc., these expenses may be averaged over the number of days the employee is authorized per diem during the entire TDY trip.

Upon review of these regulations it seems apparent that a house should be not classified as either a conventional or a non-conventional facility. It is simply classified as a house. Accordingly, neither JTR C4555-B.1 nor JTR C4555-B.4 applies. JTR C4555-D does apply, however, as this is the regulation that specifically applies to the rental of a house. Under this regulation a TDY or TQSE employee is entitled to reimbursement for the rental of a house, and there is no requirement that the employee provide a “written explanation of the circumstances that is acceptable to the DOD component.”<sup>1</sup>

The Corps, without explanation, has also cited to JTR C4555-A as support for its position. This provision deals with lodging location, which is not in issue in this case. Accordingly, C4555-A does not support the non-payment of claimant’s TQSE claim.

In this case, claimant has provided sufficient evidence (the checks and the memorandum) that he did, indeed, rent the house during the TQSE time period. Claimant has also stated that the lessor is not a friend or relative. Thus, the provisions of the JTR dealing with renting from friends or relatives do not apply. Accordingly, this rental expense must be reimbursed.

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<sup>1</sup> The JTR C4555 lodging provisions are found in chapter 4 of the JTR, which deals with TDY. Nevertheless, these particular provisions also apply to TQSE, which is covered in chapter 5 of the JTR. See *Frank J. Salber*, GSBCA 16836-RELO, 06-2 BCA ¶ 33,330.

Claimant also has claimed \$438 in real estate settlement expenses for the purchase of property in Randolph, Kansas. Claimant did not file a DD Form 1705 as required by JTR C5759-A. Additional necessary documentation may also be missing. Furthermore, no review has been made by the reviewing official concluding that the claimed expenses are reasonable and customarily paid by the buyer in the locality where the property is located. JTR C5759-C. As it currently stands, claimant's claim for real estate settlement expenses cannot be granted.

Decision

The claim is granted in part.

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R. ANTHONY McCANN  
Board Judge