



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 25, 2011

CBCA 2208-RELO

In the Matter of ELIZABETH D. GOSSELIN

Elizabeth D. Gosselin, Alexandria, VA, Claimant.

Antonio B. Castro, Chief Financial Management Resource Office, Headquarters Air Force Personnel Center, Department of the Air Force, Randolph Air Force Base, TX, appearing for Department of the Air Force.

POLLACK, Board Judge.

Elizabeth Gosselin (Claimant), an employee of the Air Force (AF), seeks an adjustment in the temporary quarters subsistence expenses (TQSE) she received as part of her permanent change of station (PCS) from Okinawa, Japan, to Alexandria, Virginia. In March 2010, claimant was transferred from her position as a public affairs specialist at Kadena Air Base in Okinawa to a similar position with the AF at Bolling Air Force Base, Washington, D.C. Pursuant to the move, she spent seven days in a hotel near her new duty station. The AF paid her TQSE for this period, based upon her election of the actual expense method. Ms. Gosselin contests the amount that she was reimbursed, contending that the directions she received as to the TQSE reimbursement choices did not adequately inform her of the consequences of her choices. She contends that had she received adequate guidance, she would not have selected the actual expense method, but instead would have chosen the fixed amount method of reimbursement. For the reasons stated below, we deny the claim.

Employees, such as Ms. Gosselin, who undergo a PCS may receive, at the option of their agency, TQSE payments to cover the cost of lodging and subsistence associated with the PCS move. 41 CFR 302-6.6 (2010); JTR C5350. In this instance, the AF opted to provide TQSE payments to Ms. Gosselin. Under the Federal Travel Regulation (FTR) and Joint Travel Regulations (JTR), once an agency decides to allow TQSE reimbursement, the agency will reimburse the employee under what is identified as the actual expense method,

unless the agency permits the fixed amount reimbursement method as an alternative. Where an agency makes both available, as was the case here, the employee may select the method to be used. 41 CFR 302-6.11. There are significant differences between the methods, involving both the amount of reimbursement and the duration. The fixed amount method is actually a lump sum payment that provides the employee with a fixed amount for up to thirty days, regardless of the employee's actual expenses. If TQSE is reimbursed according to the fixed amount method, the agency is prohibited from making any extensions to the TQSE period and the employee will receive no additional reimbursement, even if the fixed amount does not cover the employee's TQSE costs. Additionally, the fixed amount method sets its daily rate by using per diem locality rates as a base (those rates then being subject to a .75 factor reduction). In contrast, the actual expense method provides an employee with reimbursement for up to a sixty day period. That period may then be extended, at the agency's discretion, for up to an additional sixty days. The daily rate of reimbursement under the actual expense method is based upon the daily Continental United States (CONUS) rate. That rate is often significantly less than the daily rate (even as adjusted) used to calculate the fixed amount method of reimbursement. 41 CFR 302-6.100 to .203.

In the claim before us, Ms. Gosselin was provided the option of selecting either the actual or fixed amount method. Toward that end, she was provided by the AF with a Non Foreign Cost Estimate Questionnaire, which she was directed to fill out and return to the AF. The information she provided on the form was used by the AF to complete Box 14a, Temporary Quarters Subsistence Expense, on DD Form 1614. Form 1614 is the form used by the AF in cutting orders to set out the method chosen by the employee. A section of the questionnaire that was provided to Ms. Gosselin was titled TEMPORARY QUARTERS AND SUBSISTENCE (TQSE). The section provided that Ms. Gosselin must elect the method of reimbursement to be used. The questionnaire clearly stated that once an election was made, it was irrevocable. The questionnaire section in issue had two boxes, one was designated as "ACTUAL EXPENSE METHOD" and the other "FIXED METHOD." The form contained no definitions as to either of the methods.

According to Ms. Gosselin, she was unclear as to what to select and inquired of AF personnel. She was unable to get any cogent guidance and then, faced with either losing the reimbursement or making a selection, she checked the box marked "ACTUAL EXPENSE METHOD." In explaining her actions, Ms. Gosselin stated "Although I was not advised of the difference after repeated attempts, I chose the 'Actual' option because it was my understanding, after reading the literature put out in Air Force regulations, that I would be reimbursed fully for a hotel stay under the guidelines of my official orders." There is no question that at the time she made her selection she was not aware that she was choosing a method which limited her to the CONUS rate of \$116 a day. 41 CFR 302-6.102; JTR C5360.

She instead expected, at a minimum, to be reimbursed for her lodging costs, based upon the per day locality rate for the area.

Thereafter, and relying upon her understanding, she secured a room in a hotel in Alexandria, Virginia. She was quoted the hotel's government rate of \$229 per day for the lodging. That figure was somewhat above the locality rate for lodging in Alexandria (which the regulations set at \$211); however, that difference is not material to this decision.

There is no evidence that Ms. Gosselin consulted or read the specific FTR and/or JTR regulations as to TQSE reimbursements. As best we can tell, she was unaware that the regulations provided explanations for the terms actual and fixed. While she has stated that she came to her decision based on reading AF literature as to the AF regulations, we have found no writings that in any way negate what are clear distinctions set out in the regulations. While we recognize that the questionnaire provided to Ms. Gosselin did not include an explanation for the terms actual and fixed, that does not change the fact that the terms were explained in the FTR and JTR.

Discussion

There is no dispute that Ms. Gosselin checked the box marked actual on the questionnaire presented to her by the AF and that the AF then proceeded to reimburse her on that basis. There is also no question that the FTR and JTR clearly address the differences between using the actual and fixed methods, and if read would have provided adequate notice to Ms. Gosselin as to her choice. *See* 41 CFR pt. 302-6. JTR C5352. The only question before us here is whether Ms. Gosselin is entitled to change her election, after the fact, because the AF failed to provide her guidance which she considered adequate.

It is well settled by this Board that where regulations clearly set out requirements, an employee is bound by those regulations, even if the employee relied to his or her detriment upon directions from government officials to the contrary. The Board cannot enlarge a claimant's rights beyond the parameters set out in regulation, even if the employee is misled by Government actions. *Thomas A. Gilbert*, CBCA 2214-RELO, 11-2 BCA ¶ 34,786; *Joseph E. Copple*, GSBCA 16849-RELO, 06-2 BCA ¶ 33,332. Erroneous advice provided by government officials cannot provide a basis for reimbursement, where no independent authority for such reimbursement exists. *Joel Williams*, GSBCA 16437-RELO, 04-2 BCA ¶ 32,769. In the case of Ms. Gosselin, no erroneous or improper advice has been identified. Rather, her claim is based upon her assertion that the Government was obligated to provide her adequate guidance and did not. In *Stacey D. Williams-Kleinert*, GSBCA 16566-RELO, 05-1 BCA ¶ 32,961, our predecessor board in considering these matters also dealt with a claim based a charge of inadequate advice as to TQSE choices. There the board stated:

Under these circumstances, there is no remedy we can afford Ms. Williams-Kleinert that is consonant with the statutory and regulatory scheme. As the Air Force points out, even if the losing office misstated the rates that would be paid for TQSE, and could have done a better job of acquainting claimant with the extent of her benefits, there is no authority under which the agency or the Board can increase the amount of the benefits available to claimant for occupancy of temporary quarters incident to a relocation on the basis that the agency may have provided erroneous or ambiguous advice concerning available benefits. *E.g., Damon Wayne Lunsford*, GSBCA 16352-RELO, 04-2 BCA ¶ 32,680.

In summary, it is clear from the record that TQSE regulations defined the terms at issue, and had Ms. Gosselin read and consulted the regulations, she would have been on notice of the consequences of her choice. Based on well-established precedent, Ms. Gosselin's claim must fail.

As a final point, we note that we have looked at the portion of the regulations, which, under defined limited circumstances, allows for a change to TQSE method. JTR C5352-D.5.c. It allows an after the fact change where it can be shown that the initial choice was the result of a clerical error. However, for that to apply, the facts and circumstances surrounding the issuance of an authorization must clearly demonstrate that some provision, which was previously determined and definitely intended to be included by the Government, was omitted through error or inadvertence in preparing the authorization. *Joel Williams*. The evidence shows no such government intent. Rather, the authorization reflected what the Government intended, based upon Ms. Gosselin's choice. Under such circumstances no change is allowable.

The claim is denied.

HOWARD A. POLLACK
Board Judge