



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 29, 2020

CBCA 6880-RELO

In the Matter of JOHN E. GARTLAND

John E. Gartland, Claimant.

Monique N. Morgan, Director, Camp Zama Civilian Personnel Advisory Center, Civilian Human Resources Agency, Department of the Army, APO Area Pacific, appearing for Department of the Army.

LESTER, Board Judge.

Claimant, John E. Gartland, seeks the predeparture subsistence allowance portion of his foreign transfer allowance (FTA) for expenses that his dependents incurred for meals and lodging over the course of seven days after they vacated their personal residence at his original permanent duty station (PDS) in the continental United States (CONUS) immediately before making final departure for a new PDS in Japan. We grant his claim.

Background

In February 2018, Mr. Gartland departed a CONUS position with the Department of the Army (Army) for an assignment at a new PDS in Japan. Although Mr. Gartland's permanent change of station (PCS) commenced in February 2018, his travel orders authorized a delayed CONUS departure for his dependents. His PCS orders also contained the following authorization for a predeparture allowance: "Foreign Transfer Allowance (FTA), maximum 10 days per diem prior to departure from CONUS/NON-FOREIGN OCONUS location (per diem is based on your U.S. post of assignment)."

Mr. Gartland, at his own expense, returned from Japan to Boston, Massachusetts (his original CONUS duty station), in early June 2018 to assist his family in preparing for their move to Japan. After the family's household goods were packed, Mr. Gartland's family vacated the family residence and stayed at a local Boston area hotel for seven days. While the family was at that hotel, a close relative fell ill in Spain, requiring the Gartland family's immediate attendance. Mr. Gartland contacted the logistics management office at his duty station in Japan about this unforeseen circumstance, and that office amended the travel orders for Mr. Gartland's family to allow for an extended stopover in Spain after they departed Boston on their way to Japan. After receiving those approvals, Mr. Gartland flew his family directly to Spain. His family would later fly from Spain to meet him at their final destination in Japan. Neither the reimbursable portions of the family's airfare and per diem from Boston to Japan nor any costs that the family incurred while in Spain are at issue here.

Mr. Gartland subsequently submitted a claim to the Army, supported by receipts, of \$3263.73 for six days of FTA covering his family's CONUS lodging and meal costs in Boston before they made their final departure from that area. The Army denied the dependents' FTA claim, asserting that, because the dependents did not travel directly to Japan when they departed Boston, but instead detoured through and stopped in Spain before traveling to the new foreign PDS, they lost their entitlement to any FTA. Mr. Gartland's claim is now before the Board.

Discussion

"The FTA is paid pursuant to implementing regulations issued by the Secretary of State and set out in the Department of State Standardized Regulations (DSSR)." *Gregory J. Bird*, GSBCA 16110-RELO, 04-1 BCA ¶ 32,425 (2003). The DSSR defines the FTA as "an allowance under 5 U.S.C. 5924(2)(A) [(2018)] for extraordinary, necessary and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing him or herself at any post of assignment in a foreign area." DSSR 241.1(a). These costs include "costs incurred in the United States . . . prior to departure for such post." *Id.* One of the four reimbursable elements of the FTA is a "predeparture subsistence expense," which provides reimbursement of "lodging, meals (including tips), laundry, cleaning and pressing expenses in temporary quarters for [the] employee and each member of [his or her] family." DSSR 241.2(c). The predeparture subsistence expense is available "for up to 10 days before final departure from a post in the United States to a post in a foreign area, beginning not more than 30 days after [the employee and/or his or her family] have vacated residence quarters." *Id.* "[T]he 'ten days' referred to in the DSSR may be spent anywhere in the United States 'as long as [the] employee or family members have not begun travel on orders and final departure is from the U.S. post of assignment.'" *Gregory J. Bird* (quoting DSSR 242.3(c)). If the agency authorizes a delayed departure to the new

foreign PDS for the employee's dependents, as happened here, the predeparture subsistence expense remains available to the dependents using a revised rate calculation set forth in the regulations. *See* DSSR 242.7(c).¹

“[U]nder the DSSR, any FTA expenses have to be incurred before the employee or [dependent] family members have ‘begun travel on orders’ and before ‘final departure’ of the employee or his family ‘from the U.S. post of assignment.’” *Debra C. Clark-Burnside*, CBCA 6450-RELO, 19-1 BCA ¶ 37,442 (citations omitted). There is no dispute that Mr. Gartland's dependents vacated their residence in anticipation of their relocation, incurred predeparture subsistence expenses in the local Boston area immediately after vacating the residence, and then made their “final departure” from Boston, Mr. Gartland's CONUS PDS, on a flight that took them out of the United States. This qualifies them under the DSSR for predeparture subsistence expenses under the DSSR incurred before they departed Boston.

The only basis for the Army's denial of FTA is that, instead of flying directly from Boston to Mr. Gartland's new PDS in Japan, the family stopped in Spain before continuing to Japan. That authorized detour or stopover during the journey from the CONUS PDS to the foreign PDS did not make ineligible the recovery of FTA incurred at the home duty station before departure. The Army's position to the contrary directly conflicts with the Board's prior decisions in *Patrick S. Horan*, CBCA 5424-RELO, 16-1 BCA ¶ 36,515; *Gregory P. Walker*, CBCA 5496-RELO, 17-1 BCA ¶ 36,594 (2016); and *Lee Ethel Edwards*, CBCA 5446-RELO, 17-1 BCA ¶ 36,643. The position taken in those decisions is of long standing: in *Warren Shapiro*, B-208590 (Nov. 24, 1982), the Comptroller General, one of our predecessors in deciding relocation and travel expense matters, rejected an employee's request for FTA predeparture subsistence expenses that he and his dependent incurred driving across the United States *after* making final departure from the employee's original CONUS PDS, but did not question the employee's entitlement to two days of FTA for expenses incurred in the local PDS area *before* the employee and dependent departed the original PDS for the last time. The regulation, as written, does not impose the limitation that the agency seeks to impose. The agency has no valid basis for denying FTA in the circumstances here.

¹ In an agency email communication that accompanied Mr. Gartland's claim, an agency representative told Mr. Gartland in July 2019 that predeparture subsistence expenses would have been available only if he had vacated his personal residence in the Boston area in February 2018, when he personally was relocating to the new PDS in Japan, and that FTA is not available when, at a later date, dependents who were authorized a deferred relocation date begin their relocation. That position is clearly in error. Because the agency did not raise that argument in its response to the Board, we deem it waived.

Decision

Mr. Gartland's claim is granted.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge