



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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June 11, 2020

CBCA 6777-RELO

In the Matter of SCOTT T. DOWNEY

Scott T. Downey, Claimant.

Connie J. Rabel, Director, Travel Mission Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

**SOMERS**, Board Judge (Chair).

The agency has submitted this claim on behalf of claimant, Scott T. Downey, an employee of the Department of Defense, who requests reimbursement for Temporary Quarters Subsistence Expenses (TQSE) in the amount of \$18,175. The Defense Finance and Accounting Service (DFAS)–Rome Travel Pay denied his request for reimbursement. We find that claimant is entitled to receive TQSE for the 120 days requested. For the reasons stated below, the claim is granted and remanded to the agency for further action consistent with this decision.

Background

On July 13, 2017, the agency issued permanent change of station orders transferring claimant from Germany to Virginia. These orders provided that claimant would receive TQSE, but did not specify whether he would receive it as an “actual expense” or “fixed expense,” nor did it identify the number of days authorized. The remarks section of the orders stated in part that “[t]his [request/authorization for DOD Civilian Permanent Duty or Temporary Change of Station (TCS)] travel authorization form] may be amended by the gaining activity. Expense/charges not allowed at Government expense are the financial responsibility of the employee concerned.”

Claimant reported to his new station on September 3, 2017. The record includes emails from the officer in charge of his unit approving claimant's multiple requests for additional TQSE days, and amended orders were ultimately issued for a total of 120 days of TQSE.

On October 19, 2017, more than forty-five days after claimant reported to station, claimant's gaining activity amended the orders to specify that TQSE would be "fixed" for a period of "30 days." The orders noted in the Remarks section: "amendment to TQSE only" and "maximum 45 days [TQSE] prior to departure is not authorized."

Claimant submitted his settlement voucher to DFAS–Rome Travel Pay and received reimbursement in the amount of \$9000 for thirty days of lump sum TQSE (TQSE(LS)). The travel voucher submission included the following statement:

I have agreed to accept the offer of lump sum TQSE entitlement and certify that TQSE will be occupied and if not occupied, I am required to return the TQSE lump payment in full. I certify that I have accepted the terms of the entitlements effective 10/12/17.

Item 18(b) "Nature of Expense" stated "TQSE LUMP SUM 30 days." Claimant received reimbursement in the amount of \$9000 for fixed (lump sum) TQSE for thirty days, from September 15 to October 14, 2017.

When claimant sought reimbursement for sixty additional days of TQSE, the agency returned his vouchers, stating:

Per the JTR [Joint Travel Regulations] chapter 5 Part B9 para 5788 A. 5. "Once TQSE(LS) is selected, the employee may not be paid any additional TQSE if the TQSE(LS) is not adequate to cover TQSE expenses." Per JTR 5786 TQSE is limited to no more than 30 days, with no extensions under any circumstances. Additionally, if Mr. Downey was claiming TQSE actual expense method, he would have been required to provide itemized receipts and supporting documentation as outlined in JTR 5806.

Emails back and forth between claimant and the agency reflect claimant's attempts to have his orders corrected to show actual expense TQSE and to correct the number of authorized days. After the agency rejected his vouchers, claimant appealed to DFAS, which rejected the voucher because "erroneous advice" is not sufficient to permit correction of the orders after the fact. In its final decision, signed on January 30, 2020, while agreeing with claimant that

he received confusing information on the various methods of TQSE, the agency concluded that claimant was not entitled to additional compensation.

### Discussion

TQSE reimbursement is an allowance provided to government employees as a matter solely within the discretion of their agencies and not as a benefit to which they are automatically entitled. 5 U.S.C. § 5724a(c) (2012); *Christopher W. Harding*, CBCA 4542-RELO, 15-1 BCA ¶ 35,990. The Federal Travel Regulation (FTR) defines TQSE as the “subsistence expenses incurred by an employee and/or his/her immediate family while occupying temporary quarters.” 41 CFR 302-6.2 (2017). The Department of Defense’s JTR defines temporary quarters to include “[a] permanent residence . . . [as] ‘temporary’ for TQSE purposes when the [household goods] have been packed for moving and are unavailable to the residents.” JTR 5776-A. The purpose of TQSE is “to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters.” 41 CFR 302-6.3. Consistent with the FTR, the JTR states that TQSE is “intended to partially reimburse an employee for reasonable subsistence expenses incurred” incident to a relocation. JTR 5772.

The regulations identify factors for the agency to consider when determining whether to offer an employee a lump sum payment option for TQSE. Specifically, 41 CFR 302-6.304 tells the agency to consider the following:

- (a) *Ease of administration.* A lump sum for TQSE is paid to the employee prior to the occupancy of TQ, and the after the fact voucher process is eliminated under this method. Actual TQSE reimbursement requires an agency to review claims for the validity, accuracy, and reasonableness of each expense amount.
- (b) *Cost consideration.* You should weigh the cost of each alternative. Actual TQSE reimbursement may extend up to 120 days, while the lump sum payment is limited to a maximum of 30 days.
- (c) *Treatment of employee.* The employee is allowed to choose between actual TQSE reimbursement and the lump sum TQSE payment when you offer the lump sum payment method. You therefore should weigh employee morale and productivity considerations against actual cost considerations in determining which method to offer.

It is the agency's prerogative to decide whether to offer an employee the option of taking a fixed amount reimbursement for TQSE. If it does so, the "determinations to offer the fixed amount method of reimbursement and the number of days offered are clearly prospective, and the agency must make those determinations in advance." *Larry A. Heath*, GSBCA 16803-RELO, 06-1 BCA ¶ 33,260 (citing 41 CFR 302-6.200, -6.304). If the agency offers a choice, the employee selects the one that he or she prefers. 41 CFR 302-6.11. Under the fixed amount method, the employee simply receives the lump sum authorized. There is no requirement to submit receipts or otherwise account for how the payment was used. *Id.* 302-6.304(a); *Heath*. In addition, regulations require the agency to pay the lump sum TQSE to the employee up front:

**§ 302-6.306 When must we make the lump sum TQSE payment to the transferee?**

You must pay the transferee the lump sum TQSE payment prior to the occupancy of TQ. You should make the lump sum TQSE payment as close as is reasonably possible to the time that the transferee will begin occupancy of TQ.

As a general rule, an employee's election of either lump sum or actual expense TQSE cannot be changed after his or her PCS orders have been executed. JTR C5352-D.5.b. The regulations clearly make the choice prospective, and once the travel has commenced the authorized TQSE may not be changed. *See Barbara Impollonia*, CBCA 2377-RELO, et al., 12-1 BCA ¶ 34,947 (changes to travel authorization not permitted once TQSE has commenced (citing *Samuel E. Jones*, GSBCA 15770-RELO, 02-2 BCA ¶ 31,897)). The exception to that rule is if "there is an error on the face of a travel order or if all the facts and circumstances surrounding the issuance of an order clearly demonstrate that some provision which was previously determined and definitely intended to be included was omitted through error or inadvertence in preparing the order." JTR 5774-D.5.c; *Peggy L. Clevenger*, CBCA 3854-RELO, 14-1 BCA ¶ 35,796; *Kirby S. Olson*, CBCA 3297-RELO, 13 BCA ¶ 35,363.

The facts and circumstances here clearly demonstrate that the agency erred when preparing the original orders. The orders were silent regarding the type of TQSE authorized, and they did not specify the number of days. The amended orders, on the other hand, sought to limit TQSE to thirty days, but only *after* claimant had spent more than thirty days in temporary quarters. Furthermore, the agency *reimbursed* claimant a \$9000 lump sum for temporary quarters from September 15 through October 14. Payments for lump sum TQSE are paid in advance, not after the fact. Finally, if the agency had authorized claimant to be reimbursed according to the fixed method, it would have been required to allow him to choose between the two reimbursement methods. *Diane F. Stallings*, GSBCA 16793-RELO,

06-1 BCA ¶ 33,201. There is no evidence in the record that this choice was offered to claimant prior to his PCS. The fact that he sought multiple additional TQSE authorizations—which were approved by the gaining unit—seems to weigh against a lump sum choice. These inconsistencies show that an error occurred during preparation of claimant’s orders, which obfuscated the agency’s intentions.

Decision

The claim is granted. This matter is remanded to the agency to determine reimbursement consistent with this decision.

*Jeri Kaylene Somers*  
JERI KAYLENE SOMERS  
Board Judge