

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 14, 2005

GSBCA 16685-RELO

In the Matter of MONIKA MAYR

Monika Mayr, Vicksburg, MS, Claimant.

C. Bruce Sheaffer, Comptroller, National Park Service, Department of the Interior, Washington, DC, appearing for Department of the Interior.

NEILL, Board Judge.

Claimant, Ms. Monica Mayr, is an employee of the National Park Service. She asks that we review her agency's denial of various claims she has made for reimbursement of expenses incurred during a permanent change of station (PCS) move from Biscayne National Park in Florida to Vicksburg National Military Park in Mississippi. The claims generally fall into two basic categories. The first group relates to expenses incident to the claimant's residence in temporary quarters. The second group relates to expenses incurred in purchasing a permanent residence near claimant's new duty station. As explained below, we grant some of Ms. Mayr's claims and deny others.

Background

Upon arrival at Vicksburg, Ms. Mayr rented an unfurnished apartment, rented some essential furniture, and, in addition to food purchases, also bought various household items for use during her stay in temporary quarters.

Among the costs incurred by claimant while in temporary quarters but disallowed by the agency are the following:

1. Non-edible household items purchased during the authorized temporary quarters period, \$297.32;
2. An electricity connection fee charged to her at the start of her occupancy of temporary quarters, \$35.00.

In reviewing receipts provided by claimant in support of her claim for temporary quarters subsistence expenses, the agency noted a discount provided by the furniture rental company. The agency calculated this discount to be \$38.67 and concluded that Ms. Mayr failed to make allowance for it in her claim for TQSE. The agency, therefore, withheld this amount from payments found otherwise due to Ms. Mayr.

The agency also concluded that claimant was not entitled to reimbursement of various costs incurred at settlement. These include a document preparation fee of \$375 paid by Ms. Mayr to Cendant Mortgage Corporation; a document preparation fee of \$100 paid by claimant to a law firm serving as settlement agent; and a wire fee of \$15, a courier charge of \$17.50, and a long distance/fax/photocopy charge of \$15 also paid by her to the same law firm.

The agency has also concluded that claimant is not entitled to payment of a late fee owing to the time taken to process her TQSE vouchers. Ms. Mayr contends that the length of time taken cannot be justified. She notes that her first voucher was submitted on November 22, 2004, while the second was submitted on December 28, 2004. The vouchers were not paid, however, until early March. She freely concedes that the agency did have need of some clarifying information, but says that this was not even sought until after two inquiries were initiated on her behalf regarding the status of her vouchers.

The agency has rejected Ms. Mayr's request that it reconsider some determinations made regarding her vouchers. She now asks that we review the determinations made regarding the specific items described above.

Discussion

Reimbursement of Costs of Non-Food Items Purchased While in Temporary Quarters

We turn first to Ms. Mayr's claim for reimbursement for the cost of various non-food household items purchased by her while in temporary quarters. From receipts provided, it is clear that these expenses are for items such as scrubbing pads, dishwashing detergent, trash bags, glass cleaner, laundry detergent, scrubbing powder, toilet cleaner, dish cloths, general cleaner, polishing spray, a mop, a broom, floor cleaner, a dustpan, a bucket, Ziploc bags, a serving bowl, a mixing bowl, foil, plastic wrap, toilet paper, tissue, hangers, a door mat, a

small microwave oven (\$28), bleach, air freshener, soap, curtains and a curtain rod (to block out the parking lot light from claimant's bedroom window), and other similar items for cleaning, cooking, washing, and food storage.

The agency has denied a total of \$297.32 claimed by Ms. Mayr for these non-food household items. The agency apparently is of the opinion that claimant is entitled to reimbursement only for the cost of edible items purchased by an employee while in temporary quarters. According to the agency, the costs of non-edible household items are to be paid out of the transferred employee's miscellaneous expense allowance.

In support of its decision not to reimburse the costs of non-food household items from the employee's TQSE allowance, the agency cites one of its internal regulations, namely, "Director's Order 31 (DO-31), Travel Procedures." Chapter 6.8 of this regulation is quoted as stating:

Allowable subsistence expense includes charges for meals (including groceries [edible items] consumed during occupancy of temporary quarters), lodging, fees and tips incident to meals and lodging, laundry, and dry cleaning.

The agency also quotes the following section of Chapter 7.5 of the same regulation:

The types of costs intended to be reimbursed under the (miscellaneous) allowance include but are not limited to the following: Fees for disconnecting and connecting appliances, equipment, and utilities, and costs of converting appliances for operation on available utilities.

The agency has not provided us with a copy of DO-31. We, therefore, cannot determine the context in which the above-quoted statements are made and, consequently, are not in a position to say whether they are correct or incorrect. Nevertheless, whatever our conclusion might be in that regard, the agency's reliance in this case on these segments of its regulation, particularly the excerpt from Chapter 7.5, is clearly misplaced.

The allowance for miscellaneous expenses to which Chapter 7.5 refers is that described in part 302-16 of the Federal Travel Regulation (FTR). 41 CFR pt. 302-16 (2004) (FTR pt. 302-16). The very first provision in that part of the FTR states that the miscellaneous expenses covered therein are costs associated with (1) the discontinuance of the transferred employee's residence at the old official station and/or the establishment of a residence at the new official station. FTR 302-16.1.

Expenses, therefore, incurred incident to occupying temporary quarters prior to establishing a permanent residence are most definitely not expenses associated with the establishment of the employee's residence at the new official station. Consequently, non-food items purchased incident to occupying temporary quarters are not to be reimbursed through the miscellaneous expense allowance (MEA), but rather, from the employee's TQSE allowance.

Neither is it correct for the agency to rely on the provision in Chapter 6.8 of its DO-31 to support the proposition that an employee is entitled to reimbursement only for the cost of edible items purchased while in temporary quarters. Indeed, the agency's interpretation of this provision is in patent conflict with the guidance provided by the agency to its employees in its PCS information packet. In a section of this packet dealing with temporary quarters, employees are assured that reasonable expenses "incident to occupancy of temporary quarters" will be reimbursed. The fact that some such expenses are specifically mentioned as reimbursable in Chapter 6.8 does not mean that other such expenses are not reimbursable.

Claimant argues that, if transferred employees living in temporary quarters are entitled to meals and lodging, then it must follow that individuals electing to move into private temporary quarters where they, themselves, assume responsibility for their own meals and lodging, are entitled to the operating expenses associated with their efforts. We agree. Such costs are obviously incident to occupancy of temporary quarters and are undoubtedly included in the prices charged at eating establishments and places of lodging accessible to the general public.

We have reviewed the receipts claimant provided to the agency in support of her claim for reimbursement of \$297.32 spent on non-food household items during her occupancy of temporary quarters at her new duty station. The items are clearly required for the temporary occupancy of claimant's rented apartment. We find the costs reasonable and proportionate to the length of time she was authorized to remain in temporary quarters. Any extended shelf life or continuing monetary value for these items beyond the authorized period for temporary quarters would be negligible at best.¹ Ms. Mayr should, therefore, be reimbursed for the cost of these items without further delay.

We note the existence of an additional problem associated with the agency's reliance on its internal regulation, DO-31, to deny Ms. Mayr's claims. Claimant has provided for the

¹ This would include the small microwave oven for which appellant paid \$28 -- an amount undoubtedly less than what she might have paid to rent a more elaborate piece of equipment.

record a copy of several web-pages prepared by the agency's office of policy. On these pages the policy office identifies the name, title, and status of the agency's official Director's Orders. On page three of this listing, there is an entry for DO-31. The status of this DO is said to be "Being Developed." The copy of this page bears the date "5/19/2005." Ms. Mayr reported for work at her new duty station in late September of the previous year. Quite obviously, whatever the agency's interpretation of the segments quoted from DO-31 may be, the agency most certainly may not deny an employee's claim based on a regulation not in effect at the time of the employee's transfer -- particularly when that interpretation is in conflict with guidance contained in the PCS information packet which was available to the employee at the time she reported to her new duty station. Agency determinations regarding a transferred employee's claim must be based upon regulations in effect on the date the individual reports for duty at the new duty station. FTR 302-2.3.

The Electricity Connection Fee

We turn next to Ms. Mayr's claim of \$35 for an electricity connection fee paid at the start of her occupancy of temporary quarters. The agency has disallowed this charge on the ground that, like the costs of non-food household items, reimbursement of this charge should be paid from the employee's miscellaneous expense allowance. For the same reason we rejected this explanation for the household items, we reject it with regard to the connection fee. This is a cost which is obviously incident to the occupancy of temporary quarters and should be paid, therefore, from the employee's TQSE allowance.

The Discount Provided by the Furniture Rental Company

The agency's subtraction of \$38.67 from payment otherwise due on one of claimant's TQSE vouchers is particularly puzzling. The deduction was said to be based on a "discount from Aaron Rents," the company from which Ms. Mayr rented furniture for her temporary quarters. One receipt from the furniture rental company does, as a matter of fact, show a referral discount of \$22.50. In a subsequent invoice, this discount was reduced by four cents to \$22.46. Ms. Mayr ultimately took advantage of this credit by reducing her monthly payment of \$149.99 to \$127.53. For that particular month, she included in her lodging cost a charge of only \$127.53 for furniture rental.

For some unexplained reason, the agency continues to believe that the Aaron Rents discount is not \$22.50, but rather \$38.67, and that it was never reflected in the lodging costs claimed by Ms. Mayr. Accordingly, it withheld \$38.67 from payment of what it concluded was otherwise due to claimant. In its report to the Board, the agency does not address this issue, although the issue is discussed in detail in the claimant's submission. We find that the

documentation in the record simply does not support the agency's withholding. Claimant, therefore, is entitled to immediate payment of the \$38.67 previously withheld.

Ms. Mayr's Claims for Real Estate Transaction Expenses

In denying Ms. Mayr's request for reimbursement of a document preparation fee of \$375 paid to Cendant Mortgage, the agency relies upon the Board's decision in *Virginia Wensley Koch*, GSBCA 16277-RELO, 04-1 BCA ¶ 32,625. In that decision, we upheld an agency's denial of a claim for financing costs similar to those covered by a loan origination fee when the claimant had already been reimbursed for the loan origination fee up to the normal allowable limit of one percent of the loan amount. The agency's reliance on *Koch* in denying this particular document preparation fee is well placed.

Claimant attempts to justify payment in excess of one percent of the loan amount on the basis of FTR 302-11.201. Under that provision, an agency can exceed the one percent limit if the claimant can, among other things, demonstrate that an additional charge is customary in the locality where the residence is located. Ms. Mayr has provided an e-mail message from a Cendant mortgage loan processor stating that the document preparation fee of \$375 is a standard charge "customary on all our loans and is not part of the finance fee." We find the statement insufficient to justify a payment in excess of the normal one percent limit. The statement speaks only to Cendant policy and not to prevailing custom in the locality. Furthermore, although Cendant may not consider the charge to be part of the finance fee, under FTR 302-11.202(g) it clearly falls within that category as a charge imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. *See* 12 CFR 226.4(a).

While the agency properly relies on our decision in *Koch* to deny Ms. Mayr's claim for reimbursement of the document preparation fee paid to Cendant, a similar reliance on the same decision to deny her claim for reimbursement of other fees paid at settlement is misplaced. The agency incorrectly assumes that these other fees, like the document preparation fee paid to Cendant, were finance charges paid to the lender and should be deemed to be covered by the loan origination fee. They clearly are not finance charges paid to the lender.

The document preparation fee of \$100 for which claimant seeks reimbursement is found on the settlement sheet in the section dealing with title charges. It was paid to a law firm which presided over the settlement as settlement agent. The fee is a charge typically paid by the purchaser and is reimbursable under FTR 302-11.200(f)(12).

The wire fee of \$15, courier charge of \$17.50, and a long distance/fax/and photocopy charge of \$15 for which claimant seeks to be reimbursed were likewise paid not to the lender but to the law firm in charge of the settlement. With the exception of the courier charge of \$17.50, these charges also appear to be typical and reimbursable under FTR 302-11.200(f)(12).

With regard to the courier charge, we have in the past allowed reimbursement of reasonable courier fees when the claimant can demonstrate that use of the courier was prompted by more than mere considerations of personal convenience and when it is clear that the fee was incurred either by claimant or someone working on his or her behalf and not by the creditor. *Douglas Tastad*, GSBCA 16543-RELO, 05-1 BCA ¶ 32,957. In this case, it is clear that the services of a courier were secured by a third party working on behalf of claimant. Nevertheless, claimant has provided no explanation of the circumstances which led to the use of a courier. If Ms. Mayr can demonstrate to the agency's satisfaction that the courier was used for a reason beyond mere personal convenience, then this portion of her claim should also be paid.

Late Fees

Although the agency's processing of Ms. Mayr's TQSE vouchers appears to have taken an inordinate amount of time, we are aware of no authority which would justify payment of a late fee based on this delay. It is of course true that, in passing the Travel and Transportation Reform Act of 1998, Congress specifically provided for the payment of a late fee if an agency fails to reimburse an employee for a travel claim within thirty days of the submission of a proper voucher. Pub. L. No. 105-264, § 2(e), 112 Stat. 2350, 2352 (1998). In implementing this provision, however, the FTR expressly exempts from this requirement "temporary quarters subsistence expenses when not paid in a lump sum." FTR 301-52.17. Since Ms. Mayr elected the TQSE actual expense method for reimbursement, as opposed to payment of a lump sum for fixed TQSE, she is not entitled to payment of any late fee in connection with the processing of her TQSE vouchers.

Decision

Ms. Mayr's claim for reimbursement of \$297.32 for the cost of non-food items purchased while in temporary quarters, her claim for reimbursement of the \$100 document preparation fee listed on the settlement sheet under "Title Charges," her claim for reimbursement of an electricity connection fee of \$35 paid at the start of her occupancy of temporary quarters, and her claim for reimbursement of a \$15 wire fee and long distance/fax/photocopying fee of \$15 paid at settlement are all granted. We also direct the agency to refund to Ms. Mayr the \$38.67 withheld from payment of moneys otherwise due

her on the mistaken belief that she had failed to take advantage of a discount offered to her by her furniture rental company.

Ms. Mayr's claim for reimbursement of a \$350 document preparation fee paid to Cendant Mortgage Company and her claim for a late fee based on the untimely payment of her TQSE vouchers are denied.

Finally, Ms. Mayr's claim for reimbursement of a courier fee paid at settlement may be paid if she can demonstrate to her agency's satisfaction that this fee was incurred for reasons beyond mere personal convenience.

EDWIN B. NEILL
Board Judge