

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 11, 2000

GSBCA 15338-TRAV

In the Matter of JAVIER R. HERNANDEZ

Javier R. Hernandez, Laredo, TX, Claimant.

Joseph D. O'Leska, Jr., Assistant Commissioner, Office of Financial Management, Immigration and Naturalization Service, Department of Justice, Washington, DC, appearing for Department of Justice.

BORWICK, Board Judge.

Claimant, Javier R. Hernandez, an employee of the United States Department of Justice, seeks reimbursement for the alleged long-term lodging costs during his extended temporary duty in Charleston, South Carolina. Claimant stayed with his brother, who incurred certain expenses of maintaining the residence during claimant's 136-day stay with him. The agency denied the claim because claimant had not demonstrated that those costs represented additional costs of maintaining the residence as a consequence of claimant's stay. We sustain the decision of the agency, which correctly applied the Federal Travel Regulation (FTR).

The facts are as follows. On March 11, 1998, the agency sent claimant on an extended detail for 143 days--between March 18 and August 7, 1998--from claimant's official station in Laredo, Texas to Charleston, South Carolina. The travel authorization provided fixed maximum sums for lodging and per diem allowance. Claimant's detail actually lasted from March 18 to August 12, a period of 148 days. He spent three days traveling to Charleston and then took up lodgings at his brother and sister-in-law's residence. He rented the second

floor of the property and used the bathroom, laundry, kitchen and garage of the home. Claimant also used the back yard of the home to accommodate his pets, which he brought with him on his trip. Claimant stayed at his relatives' residence for 136 days, until August 3.

Claimant states that he entered into "a contractual verbal lodging agreement" with his relatives and therefore felt entitled to claim the maximum allowable lodging rate for the area, which was \$100 per day, for a total of \$13,600 for lodging. At the end of each month during his stay with his relatives, claimant submitted a voucher for per diem plus \$100 per day for lodging.

On December 3, 1999, the agency advised claimant that "[s]ince you stayed with your brother in his house, you can only claim the additional expense your brother incurred to accommodate you, not the \$100 a day that you claimed." The agency urged claimant to correct the vouchers and to submit whatever evidence he had showing the additional expenses incurred to accommodate claimant's lodging. The agency gave a specific example-- it suggested that a comparison of light and water bills for the lodging period and light and water bills for the same time period for the previous year might substantiate the increased costs claimant's brother incurred because of claimant's lodging.

On or about December 20, claimant submitted an amended voucher, this time claiming \$43.53 per day for each day's lodging. Claimant explained that the amount was "an average of the total cost incurred by host (\$5922) divided [by] 136 total days on detail." As proof of the incurrence of the \$5922, claimant submitted copies of his brother's Internal Revenue Service Tax Return Schedule E.

On January 10, 2000 an agency official disputed the sufficiency of the substantiation claimant had presented and requested a resubmittal. Claimant resubmitted the vouchers, this time claiming a total of \$5900 and attaching receipts for expenses for goods and services incurred by his brother and his family.

The receipts included the following, as summarized by claimant:

Electricity	763.12
Water and sewer	286.03
Cell Phone	373.39
Trash Pickup	75.00
6 months Cable TV@ 31.50/month	186.90

Carpet Cleaning, Bedroom, Living Room, Hall	50.00
Mattress	265.00
Shaker chest and night stand	608.44
Montgomery ward, unidentified item and service contract	334.98
Household sundries, i.e. shower curtain, light bulbs, bath towels	77.61
Toilet seat	31.76
Household sundries	68.77
"Bed in a Bag"	105.99
Appliance parts	42.35
Plumbing supplies, Home Depot	61.10
Circuit city entertainment center	1155.38
K-Mart sundries including bath towels, grill cover, light bulbs.	260.90
Sheets, bath set, shower liner, can opener--Wal-Mart	175.67
Circuit City, TV accessories	60.39
Brother Tax Preparation Fee	130.00
Bedroom furniture	107.00
Unexplained recreational items expense	360.00
Pillows, tension rod	45.58
Washclothes, hand towels	16.96
Key quicksets	6.17
Telephone service--March-August	249.50
Total	5897.99

The utilities and other services (electricity, cable television, and telephone) used by claimant were not segregated from the general household's use of such services.

Although the claimant's brother and his sister-in-law rent other properties, they had not rented the second floor of their residence before.

The agency denied the request in the amended voucher because it "believe[d] the back-up documentation did not substantiate additional out-of-pocket expenses" incurred by claimant's relatives. The agency states that "the invoices did not state that there was a separate apartment as the property management invoice noted, nor did they substantiate additional out-of-pocket costs."

The FTR provides that when a federal traveler on official business stays with a friend or relative:

You may be reimbursed for additional costs your host incurs in accommodating you only if you are able to substantiate the costs and your agency determines them to be reasonable. You will not be reimbursed the cost of conventional lodging in the area or a flat "token" amount.

41 CFR 301-11.12(c) (1998). This version of the regulation was effective July 1, 1998, during the later part of claimant's travel. The version of the regulation in effect before July 1, 1998 is in substance the same. 41 CFR 301-7.9(c)(3) (1997). The FTR is clear that such a traveler is entitled only to the additional cost the host incurred in accommodating the traveler. See Donald Mixon, GSBCA 14957-RELO, 99-1 BCA ¶ 30,606. Here, claimant seeks the maintenance costs for his brother's household, not the additional costs claimant's brother incurred in accommodating claimant. For example, claimant seeks reimbursement for the full cost of an entertainment system, furniture, and lawn care equipment, items which obviously have a useful life far beyond claimant's 136-day stay at his brother's residence. The same can be said for the bath towels, mattress, toilet seat, "bed in a bag," appliance parts, plumbing supplies, light bulbs, grill cover, sheets, can opener, and key quicksets.

The consumables and utility and utility-type services, such as electricity, cell phone and cable television, were used by the whole household. Claimant has not demonstrated what extra costs for those services were attributable to his 136-day stay. It is not possible, for example, to determine from the receipts claimant has presented how much more electricity the household used due to claimant's 136-day stay than it would have used had

claimant not resided at the residence for that period. Nor, consequently, it is possible to determine the extra cost of that additional electricity.

Claimant relies on a provision of the FTR which allows a traveler on official business to be paid the following expenses when renting a room, apartment or other lodging on a long-term basis: (a) rental cost of a furnished dwelling; if unfurnished the rental cost of the dwelling and the cost of appropriate and necessary furniture and appliances; (b) cost of connecting and disconnecting utilities; (c) cost of reasonable maid fees; (d) monthly telephone use fees; (e) if ordinarily included in the price of a hotel/motel room in the area concerned, the cost of special user fees. 41 CFR 301-11.15 (1998). In his submission, claimant emphasizes with a highlighter the cost related to unfurnished premises.

Claimant's reliance on that provision is misplaced. First, the provisions of 41 CFR 301-11.12(c) (1998), and 41 CFR 301-7.14 (a) (1997), are limitations on lodging entitlements when a traveler stays with a friend or relative. The limitations do not apply when the friend or relative is in the business of renting the living space for which the employee incurs occupancy costs and has entered into an arm's-length business relationship with the traveler. Michael S. Knezevich, GSBCA 14398-TRAV, 98-1 BCA ¶29,607. Here, claimant's brother did not rent out the second floor of his house on a regular basis and claimant has not demonstrated that he entered into an arms-length transaction with his brother for rental of the premises.

Second, the provisions at 41 CFR 301-11.15 (1998) and 41 CFR 301-7.14 (a)(1997)¹ deal with either the landlord's charges to the traveler or costs incurred directly by the traveler resulting from the long term stay. They do not provide reimbursement for costs incurred by a relative in running his household.

The agency acted correctly in denying the claim.

¹ There is one substantive difference between the old and new version of this provision of the FTR. In the case of an employee renting unfurnished lodgings, 41 CFR 301-7.14 (a) (1997) authorized payment of the "rental cost" of appropriate and necessary furnishings for the room. In the case of unfurnished lodgings, 41 CFR 301-11.15 (1998) authorizes payment of "the rental cost of the dwelling and the cost of appropriate and necessary furniture and appliances" In light of our disposition here, we need not decide whether the term "rental" in the sentence immediately above modifies both "cost of the dwelling" and "cost of appropriate and necessary furniture and appliances."

ANTHONY S. BORWICK
Board Judge