

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

September 4, 2002

GSBCA 15870-RELO

In the Matter of RICHARD J. ANDERSON

Richard J. Anderson, Missoula, MT, Claimant.

Jeanne DiGange, Authorized Certifying Officer, Office of the Chief Financial Officer, National Finance Center, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

GOODMAN, Board Judge.

Claimant, Richard J. Anderson, is an employee of the Department of Agriculture. He has requested that this Board review the agency's denial of his claim that he be reimbursed for his temporary quarters subsistence expenses (TQSE) at the fixed rate, pursuant to his permanent change of station (PCS) move.

Factual Background

Claimant was authorized a permanent change of station from Jackson, Wyoming, to Missoula, Montana, by travel orders dated May 14, 2001. His orders authorized TQSE for up to sixty days for his family when they reported to the new duty station. Claimant was in temporary quarters for only three days and submitted a travel voucher. The voucher claimed actual TQSE expenses in the amount of \$991.63, as follows:

Lodging	
7/01/2002	57.20
7/02/2002	57.20
7/03/2002	57.20
Total Lodging	\$171.60
Meals and Incidental Expenses (M&IE)	
7/01/2002	47.30
7/02/2002	31.45
7/03/2002	41.28

Total M&IE	\$120.03
Miscellaneous Allowance	\$700.00
Total for Temporary Quarters	\$991.63

After claimant completed his travel, he became aware that it was the agency's policy to allow employees to choose between receiving reimbursement of actual TQSE expenses or TQSE at a fixed rate for up to thirty days. Claimant then submitted a voucher for thirty days of TQSE at the fixed rate, which totaled \$2550.

The agency seeks our opinion as to whether it can now change claimant's travel orders to allow reimbursement at the fixed rate.

Discussion

The Federal Travel Regulation (FTR), Chapter 302-5, governs the use of temporary quarters and the instances of when and how they should be authorized. The version which was applicable at the time of claimant's PCS reads in relevant part:

§ 302-5.11

What methods may my agency use to reimburse me for TQSE?

Your agency will reimburse you for TQSE under the actual expense method unless it permits the "fixed amount" reimbursement method as an alternative. If your agency makes both methods available to you, you may select the one you prefer.

.....

§ 302-5.200

What am I paid under the fixed amount reimbursement method?

If your agency offers and you select the fixed amount TQSE reimbursement method, you are paid a fixed amount for up to 30 days. No extensions are allowed under the fixed amount method.

§ 302-5.201

How do I determine the amount of my payment under the fixed amount reimbursement method?

Multiply the number of days your agency authorizes TQSE by .75 times the maximum per diem rate (i.e., lodging plus meals and incidental expenses) prescribed in chapter 301 of this subtitle for the locality of the new official duty station. Then, for each member of your immediate family, multiply the same number of days by .25 times the same per diem rate. Your payment will be the sum of these calculations.

....

§ 302-5.304

What factors should we consider in determining whether to offer an employee the fixed amount TQSE reimbursement option?

The factors you should consider include:

(a) Ease of administration. Actual TQSE reimbursement requires an agency to review claims for the validity, accuracy, and reasonableness of each expense amount. Fixed amount TQSE reimbursement does not require review of expense amounts and is therefore easier to administer.

(b) Cost considerations. You must weigh the cost of each alternative. Actual TQSE reimbursement may extend up to 120 consecutive days, while fixed amount TQSE reimbursement is limited to 30 days. Actual TQSE reimbursement may be less expensive, since its ceiling is based on the standard CONUS [Continental United States] rate, while fixed amount TQSE reimbursement is based on the locality per diem rate. However, fixed amount TQSE reimbursement may be less expensive because the maximum daily rate under actual TQSE reimbursement is a higher percentage of the applicable per diem rate than fixed amount TQSE reimbursement.

(c) Treatment of employee. The employee is allowed to choose between actual TQSE reimbursement and fixed amount TQSE reimbursement when you offer the fixed amount TQSE reimbursement method. You therefore should weigh employee morale and productivity considerations against actual cost considerations in determining which method to offer.

41 CFR 302-5.11, -5.200, -5.304 (2001).

In claimant's case, the agency authorized him the actual temporary quarters expenses without the opportunity to choose the fixed rate. Claimant feels that because the agency did not allow him to choose, he should be able to have his travel orders amended to allow his TQSE to be reimbursed at the fixed rate, rather than by the actual expense method.

Claimant's desire to have his travel reimbursed at the fixed rate appears to be based on his belief that he would be entitled to thirty days worth of TQSE at that rate, which he calculates to be \$2550 (\$85 per day x 30 days) even though he was only in temporary quarters for three days and his actual TQSE expenses were \$291.63.¹

Travel orders may not be revoked or modified retroactively so as to increase or decrease the rights which have become fixed after the travel has been performed, except where there are errors apparent on the face of the original orders or where all the facts and circumstances surrounding the issuance of the original orders clearly demonstrate that some provision which was previously determined and definitely intended had been inadvertently omitted in their preparation. Alex L. Rowe, GSBCA 14479-RELO, 98-2 BCA ¶ 29,919. In this instance, facts and circumstances surrounding the issuance of the original orders clearly demonstrate that the choice afforded to the employee between reimbursement of actual or fixed TQSE was omitted. Accordingly, claimant may now be afforded this choice.

If claimant chooses to be reimbursed at the fixed rate, the agency must determine how many days of TQSE to authorize. The regulation provides that the agency may authorize up to thirty days of fixed rate TQSE, which means that the agency does not have to authorize the full thirty days. In this case, because claimant has not been given his choice of actual rate or fixed rate TQSE until after he has moved into permanent quarters, the agency knows that claimant spent only three days in temporary quarters. Because the agency knows that claimant only needed temporary quarters for three days, it obviously has no rational basis for authorizing claimant any more than three days of fixed rate TQSE. If claimant chooses the fixed rate TQSE option, the agency may, therefore, modify his travel orders to authorize the fixed rate option but only for three days.

¹ Claimant included \$700 for miscellaneous expenses in his claim for actual TQSE. This is an amount allowable under the FTR. See 41 CFR pt. 302-3.

The agency's policy was to give its employees the option of choosing actual rate or fixed rate TQSE. Since the agency failed to give claimant that choice before he relocated, it should allow him to make that choice now. If claimant chooses to be reimbursed at the fixed rate, the agency should modify his travel orders to authorize him three days of TQSE and he will be paid \$255 (3 x \$85). If he chooses to be reimbursed at the actual rate, he will be paid \$291.63 in accordance with his orders as originally issued.

Decision

The agency may amend claimant's travel orders to allow him to choose between the actual rate and fixed rate of TQSE reimbursement. If claimant chooses to be reimbursed at the fixed rate, he would be entitled to reimbursement for three days of TQSE at the fixed rate.

ALLAN H. GOODMAN
Board Judge