

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 21, 2003

GSBCA 15902-RELO

In the Matter of MARILYN A. ROBINSON

Marilyn A. Robinson, Bayonne, NJ, Claimant.

Brenda H. Mixon, Chief, Travel Division, United States Army Corps of Engineers Finance Center, Millington, TN, appearing for Department of the Army.

HYATT, Board Judge.

When an agency inadvertently fails to offer an employee transferring in the interest of the Government the fixed amount option for temporary quarters subsistence expenses (TQSE), it may retroactively amend the employee's travel orders to authorize this option.

Background

Claimant, Marilyn A. Robinson, returned to her job with the United States Army Corps of Engineers following an overseas tour with the Department of Defense Dependent Schools in Okinawa, Japan. She returned to her original office of employment with the Corps' district office in New York City, New York. Her permanent change of station (PCS) orders authorized TQSE not to exceed sixty days. Upon returning to New York, Ms. Robinson occupied temporary quarters for thirty days, from June 23 to July 23, 2001. Ms. Robinson stayed at a hotel in New York City before locating, and moving into, permanent quarters.

Ms. Robinson encountered numerous difficulties with the processing of her PCS orders prior to her return and subsequently in getting paid for the expenses she incurred. The last day of school in Okinawa was scheduled for June 15, 2001, and Ms. Robinson had planned to travel back to New York immediately. Although she diligently communicated with the New York office for the Corps, her orders were not issued until June 8, 2001. The district office explains that much of the confusion and delay was attributable to the retirement of its only PCS-experienced employee prior to Ms. Robinson's move and the inability to get the replacement PCS coordinator fully trained until after claimant had returned to New York. The process was further hindered by difficulties in communicating with an overseas location.

After Ms. Robinson returned to New York and sought reimbursement for her expenses, the district office reviewed her travel orders and realized that the office had inadvertently neglected to offer Ms. Robinson the option of fixed rather than actual expense TQSE. Once the option was offered, Ms. Robinson elected fixed amount TQSE. The district office then issued an amendment, dated August 15, 2001, to her travel orders specifying fixed amount TQSE.

When Ms. Robinson's paperwork, based on the fixed amount TQSE, was submitted for processing to the Corps' Finance Center in Tennessee, the Finance Center limited her TQSE reimbursement to the amount available under the actual expense method. It based this determination on the fact that the travel orders initially issued, and in effect at the time Ms. Robinson actually moved, provided for TQSE not to exceed sixty days. This, according to the Finance Center, demonstrated that the actual expense TQSE had been authorized since fixed TQSE is limited to a maximum of thirty days. The Finance Center rejected the district's explanation that the office had not intended to authorize any particular type of TQSE and had inadvertently omitted to inquire as to the claimant's preference prior to her return. The Finance Center thus authorized payment of TQSE under the actual expense method, which resulted in a significantly reduced payment to claimant.

Claimant used her Government credit card to pay for the temporary lodging expenses incurred in connection with her return to the United States, but was not sufficiently reimbursed by the Government to enable her to remit payment for the charges incurred in a timely manner. As a result, she incurred late payment fees and finance charges on her Government credit card for which she also seeks reimbursement. In addition, Ms. Robinson was authorized the miscellaneous expense allowance in connection with her return to New York. She states that she never was paid this allowance. Claimant further asks to be compensated for "pain and suffering" caused by the agency's refusal to reimburse her what she believes she is owed, a circumstance which led to the difficulties she encountered with her credit card. Finally, Ms. Robinson seeks reinstatement of sick leave and annual leave.

Discussion

The principal question raised by this request arises from the disagreement between the Corps' district office in New York and the Finance Center in Tennessee, as to whether claimant's travel orders could properly be amended after her travel was completed to effectuate an election of fixed rate TQSE. This issue is of importance primarily because of the level of compensation for TQSE provided under the alternate methods of reimbursement. Under the traditional actual expense method, the employee is compensated for actual costs incurred, up to the amount of the standard per diem rate for the continental United States (CONUS), for up to sixty days, and, if compelling reasons are found, for up to an additional sixty days, for a total of no more than 120 days. 41 CFR 302-5.100 to -5.105 (2001); JTR C13205. Under the lump sum, or fixed, method of reimbursing TQSE, the employee is limited to a fixed amount based on a percentage of the per diem rates set for the locality of the permanent duty station, for a maximum of thirty days. 41 CFR 302-5.200; JTR C13305. Under fixed TQSE, the employee simply receives the amount authorized and is not required to provide receipts or an accounting of how the TQSE payment was used. JTR C13315. No

extensions of time are allowed and the employee is not eligible for any additional payments if the fixed amount is not adequate to cover the cost of occupying temporary quarters. JTR C13310; Sandra L. McClellan-Whittle, GSBCA 15573, 02-1 BCA ¶ 31,781; see generally Lori A. Hazenstab, GSBCA 15256-RELO, 00-1 BCA 30,886. Here, because New York City has a high per diem rate, the election of fixed amount TQSE would yield a much higher rate of compensation for the thirty day period than the actual expense method, which is limited to the standard CONUS rate of \$85 per day.

The Board has previously addressed this issue in Richard J. Anderson, GSBCA 15870-RELO, 02-2 BCA ¶ 31,999, modified on other grounds, 2002 WL 31835731 (Dec. 18, 2002). There, we stated:

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.

02-2 BCA at 158,109. Similarly, the district office here has explained that it should have offered this option to Ms. Robinson prior to travel and failed to do so because of staffing changes occurring when claimant needed to return to New York and the difficulty of communicating with an overseas location. The form used simply provided for authorization of TQSE; it did not differentiate between the actual expense and fixed amount options. Since Ms. Robinson was not told of her options and offered the opportunity to choose the method she preferred, the district office determined it should try to rectify the situation. Based on this explanation, we believe the district office and claimant have demonstrated that the subsequent decision to offer the option and to amend Ms. Robinson's travel orders was appropriate. As such, Ms. Robinson should be paid in accordance with the fixed amount election for thirty days of TQSE.

Ms. Robinson is also entitled to be paid the miscellaneous expense allowance authorized in her travel orders. Anderson. The Board has no authority to review her claims for compensation of out-of-pocket costs incurred in the form of penalties and interest charged by the credit card company, or for pain and suffering. Jacqueline Butler, GSBCA 15478-RELO, 02-1 BCA ¶ 31,681. Finally, Ms. Robinson's claim for reinstatement of leave, if not yet resolved, must be submitted to the Office of Personnel Management. Walter W. Lee, GSBCA 13669-TRAV, 97-1 BCA ¶ 28,686 (1996).

CATHERINE B. HYATT
Board Judge