

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 18, 2004

GSBCA 16309-RELO

In the Matter of MICHAEL A. MacINERNEY

Michael A. MacInerney, APO Area Europe, Claimant.

Karen M. Quasny, Acting Chief, Policy Management Branch, Civilian Personnel Directorate, and Seventh Army, Office of the Deputy Chief of Staff, G1, Headquarters, United States Army, Europe, Department of the Army, APO Area Europe, appearing for Department of the Army.

BORWICK, Board Judge.

Claimant, a civilian employee of the Department of the Army (agency), is entitled to reimbursement of the foreign transfer allowance (FTA) for the period April 1 through April 7, 2003, arising from his overseas transfer. The agency denied his claim for reimbursement, because in its view claimant did not meet the regulatory requirements for reimbursement. We grant the claim in substantial part. Claimant met the requirements of the Joint Travel Regulations (JTR) and the Department of State Standardized Regulations (DSSR) for reimbursement of the FTA. We return the matter to the agency for calculation of the amount due, as directed below.

Background

On March 3, 2003, the agency authorized claimant's overseas transfer from the Iowa Army Ammunition Plant (IAAP), Joint Munitions Command, Middletown, Iowa, to the IMA-E, Europe Region, Heidelberg, Germany. The agency authorized claimant relocation entitlements, including shipment of his household goods (HHG) and ninety days' temporary storage of HHG. Additionally, the agency authorized claimant reimbursement of the FTA for a period not to exceed ten days prior to claimant's departure from the continental United States (CONUS).¹

¹ The agency also authorized claimant to receive other allowances under the DSSR, including living quarters allowance in Germany, up to ninety days temporary quarters subsistence expenses while in Germany, and a post allowance.

During claimant's permanent duty at the IAAP, claimant leased an apartment in Burlington, Iowa, and resided there with his wife and child. The apartment was five miles from the IAAP. Claimant's child attended school in Burlington and claimant's spouse obtained an Iowa driver's license.

Claimant's permanent change of station (PCS) authorization, prepared by the agency's Civilian Personnel Office, Heidelberg, Germany, identified Middletown, Iowa, as claimant's releasing official station, Gainesville, Florida, as claimant's "actual residence," and Orlando, Florida, as claimant's alternate residence. Claimant explains that the agency civilian personnel specialist put Gainesville, Florida, as claimant's residence after claimant told the specialist that he wanted to take annual leave to visit his relatives in Gainesville, and, after that visit, to depart for Germany from Orlando, Florida. The authorization also granted dependents' travel from Orlando, Florida, to Heidelberg and claimant's travel from the IAAP to Heidelberg.

Despite the language of the authorization regarding dependents' travel, eventually the agency's transportation/ticketing office directed claimant and his family to depart from the closest airport to claimant's duty station, either Moline, Illinois, or St. Louis, Missouri. Claimant chose the St. Louis/Lambert International Airport because the agency's vehicle processing center (VPC) was next to that airport, and claimant could ship his automobile from the VPC.

On March 16 and 17, 2003, claimant moved his family from his residence to a motel in Burlington, to allow movers to pack and ship his HHG. On or about March 18, claimant took annual leave and, with his immediate family, visited relatives in Gainesville, Florida. The record is not clear when claimant left Florida (his leave ended on March 31), but on or about April 1, he and his family arrived in St. Louis to ship his privately owned vehicle and to start his overseas travel from the St. Louis/Lambert International Airport. Claimant was on personal travel between Burlington, Iowa; Gainesville, Florida; and St. Louis, Missouri. Claimant had originally intended to depart St. Louis for Heidelberg on April 4, 2003, but the Government's failure to secure a passport for claimant's daughter by that date delayed claimant's departure until April 7.²

On April 11, 2003, after his arrival in Heidelberg, claimant requested reimbursement of \$1607.85 for the FTA, which included nine days' subsistence expenses for March 16 and 17 and April 1 through 7.

On July 14, 2003, the agency determined:

Based on the information provided to this office, the claimant did not meet the above requirements for [the] grant of FTA. As stated on his travel orders he was scheduled to report to his new duty station in Germany on 7 April 2003. Accordingly, his pre-departure subsistence expenses would have been authorized up to ten days prior to his scheduled departure date on 4 April 2003 (i.e. from 25 March 2003), had [claimant] and his family departed from

² According to the agency's transportation specialist, an agency oversight in submitting identification documentation for claimant's child to the Department of State delayed delivery of the passport from March 23 to April 7, 2003.

his official post of assignment. [Claimant], however, at his personal discretion, vacated his permanent residence at his former official post of assignment and occupied temporary quarters at Burlington, IA, from 16 to 17 March 2003. Subsequently, he traveled to Florida before he arrived in St. Louis, MO, on 1 April 2003, to ship his privately owned vehicle. He finally departed from St. Louis to Germany on 7 April 2003, without returning to his post of assignment.

....

Based on the above, the claimant was neither entitled to reimbursement for pre-departure subsistence expenses [for the period] 16 to 17 March 2003, nor at the Marriott Hotel in St. Louis, MO, from 1 to 7 April, 2003.

Discussion

Statute provides that agencies may grant as a cost of living allowance a transfer allowance for extraordinary, necessary, and reasonable subsistence and other relocation expenses, not otherwise compensated for, incurred by an employee incident to establishing himself at a post of assignment in a foreign area. 5 U.S.C. § 5924(2)(A) (2000). By delegation of the President of the United States, the Secretary of State implements the statute through the DSSR. Gregory J. Bird, GSBCA 16110-RELO, 04-1 BCA 32,425 (2003). The FTA consists of four separate elements: (1) a lump sum miscellaneous expense portion, (2) a lump sum wardrobe expense portion, (3) a pre-departure subsistence expense portion, and (4) a lease penalty expense portion. DSSR 241.2.

Through the JTR, the agency has granted to its employees who are transferred overseas the pre-departure subsistence expense portion of the FTA according to the requirements of the DSSR. JTR C1004-C3.³ The pre-departure subsistence expense reimbursement is calculated either by the partial flat rate method or the total actual subsistence method. DSSR 242.3.a, .b. The agency's PCS authorization granted claimant reimbursement using the total actual subsistence method.

Under the DSSR, the pre-departure subsistence expense applies to:

[The] employee and each member of [the] family for up to [ten] days before final departure from a post in the United States to a post in a foreign area, beginning not more than [thirty] days after they have vacated residence quarters.

DSSR 241.2.c.

The vacating of residence quarters, therefore, is a prerequisite to the commencement of the ten-day period, and the FTA period must begin not more than thirty days after the employee or the employee's family has vacated residence quarters. In one case, the

³ The agency also grants an additional element that is not in issue here.

Department of State, which administers the DSSR, argued that an employee was not entitled to the FTA reimbursement because he had not vacated permanent quarters. We recognized that under the DSSR vacating residence quarters was a prerequisite to payment of the FTA subsistence expense, but held that the employee constructively vacated his permanent residence. Gordon D. Giffin, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100.

Here, it is clear, despite the agency's designation of Gainesville, Florida, as claimant's actual residence on the PCS authorization, that claimant and his family occupied permanent quarters in Burlington, Iowa, and vacated those quarters on March 16.⁴ Consequently, under the DSSR, the FTA subsistence expense period could commence, as it did here, by April 15.

The DSSR also provides:

The ten days may be anywhere in the [United States] (calculated using the per diem rate of the [United States] post of assignment) as long as [the] employee or family members have not begun travel on orders and final departure is from the [United States] post of assignment.

DSSR 242.3.c.

This provision of the DSSR makes it clear that the FTA is for a ten-day subsistence period anywhere in the United States before the transferred employee commences his or her journey overseas from the permanent duty station. The General Accounting Office (GAO), our predecessor in handling claims for relocation expenses, construed an earlier version of the same regulation in a case involving a similar issue. There the agency transferred an employee to Korea from St. Louis, Missouri. The employee drove his car to Oakland, California, for eventual shipment to Korea and claimed the FTA for the portion of his trip to California. The GAO upheld the agency's denial of FTA reimbursement because in leaving St. Louis for California, the employee had begun his overseas journey and had been paid travel per diem for his trip from St. Louis to Oakland. Warren Shapiro, B-208590 (Nov. 24, 1982).

The agency in this matter essentially argues that by visiting his relatives in Florida and by not returning to his permanent duty station before proceeding to the St. Louis/Lambert International Airport, claimant began his overseas journey. This case is not Shapiro. Claimant was on approved leave for his visit to Florida and bore the expense of that trip. After his trip to Florida, he returned to the airport closest to his permanent duty station that would both accommodate the shipment of his vehicle and provide him with convenient overseas flights. Had claimant returned to the IAAP, he would have departed

⁴ An employee may designate as the home of record or actual residence a residence located away from his or her originating CONUS permanent duty station for the purpose of administering return travel benefits from an OCONUS location. JTR C7003; John C. Burton, GSBCA 15991-RELO, 03-2 BCA ¶ 32,328. That designation is of no consequence to eligibility for the FTA.

from the St. Louis/Lambert International Airport in any event.⁵ Claimant's return to that airport, therefore, was in effect a return to his duty station, and met the spirit, if not the exact letter, of the DSSR. The agency's suggestion that regulation required claimant to physically return to his permanent duty station to qualify for the FTA is too technical.

Claimant, however, is not entitled to the full amount of his claim, which seeks reimbursement for the period March 16 through March 17 and April 1 through April 7. Under the DSSR, claimant is entitled to reimbursement for one period of FTA subsistence, not to exceed ten days before final departure, unless extended for unusual circumstances by the agency. DSSR 241.2.c, 242.3.c. Since claimant's final departure was on April 7, 2003, the days of March 16 and 17 fall outside of the allowable ten-day period.

Claimant bases his claim for the period April 1 through 7 on lodging rates at the St. Louis/Lambert International Airport. While the ten days may be spent anywhere, claimant's reimbursement must be based on rates in effect near the IAAP, claimant's permanent duty station. Bird.

The Board grants the claim, but returns the matter to the agency for calculation and payment of the allowable amount.

ANTHONY S. BORWICK
Board Judge

⁵ The St. Louis/Lambert Airport is approximately 217 miles south of Burlington, Iowa, claimant's residence while at the IAAP. To satisfy the agency's interpretation of the DSSR, claimant and his family would have had to drive from Florida, past the St. Louis/Lambert Airport to Burlington, Iowa and then drive south again to the airport, a round-trip of 434 extra and unnecessary round-trip miles.