

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 14, 2004

GSBCA 16408-RELO

In the Matter of JASON A. KNAPP

Jason A. Knapp, Slidell, LA, Claimant.

Robert Cooke, Chief, Fiscal Services Branch, Food Safety and Inspection Service,
Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

BORWICK, Board Judge.

In this matter we grant in part the claim of Jason A. Knapp, an employee of the United States Department of Agriculture, agency. The agency retroactively reduced claimant's fixed amount temporary quarters subsistence expense (TQSE) reimbursement from \$8667 to \$709.50. In doing so, the agency violated pertinent provisions of the Federal Travel Regulation (FTR). The agency owes claimant \$7957.50. Another claim for reimbursement of \$405 for a funding and review fee expense claimant incurred in the purchase of the residence at his new duty station is no longer in dispute. The agency has agreed to pay the funding and review fee expense upon the submission of suitable documentation from the lender and the lender has submitted the requested documentation. This part of the claim is dismissed.

Background

By travel authorization of January 29, 2004, the agency authorized claimant's transfer in the interest of the Government from Fairmont, Minnesota, to New Orleans, Louisiana. Because claimant transferred in the interest of the Government, the agency authorized claimant relocation benefits, including reimbursement of TQSE and real estate transaction expenses.

Before his transfer, the agency advised claimant of the two existing TQSE reimbursement options, the fixed amount method and the actual expense method.¹ The differences were explained in a combined options sheet and election form the agency

¹ The agency calls this method the "fixed rate" method. The FTR refers to this method as the fixed amount method. We follow the FTR's nonmenclature.

presented to claimant. The agency explained that, under the fixed amount method, no receipts or itemization of meals would be required, the employee "claims a fixed rate method [on] his/her travel voucher," and there would be no extension of TQSE beyond thirty days. The agency stated that the employee and his family would be reimbursed the authorized lump sum amount of \$8667 for thirty days of fixed amount TQSE.

For the actual expense method of reimbursement the agency explained that claimant and his family would be reimbursed up to the authorized amount of \$7095 for thirty days of TQSE. The agency explained that, for this method, receipts for lodging and itemization of meals were required and additional periods of TQSE might be authorized on a case-by-case basis at reduced rates for employees not using the home sales portion of the relocation service program.

Claimant states, without refutation by the agency, that before claimant elected the fixed amount or actual expense method of TQSE reimbursement, claimant had a conversation with an agency financial specialist, who explained that reimbursement under the fixed amount method for TQSE meant being paid a lump sum. If claimant went over the allotted time, claimant would be responsible for any additional out of pocket expenses incurred. If, however, claimant was under the allotted time, claimant could keep the unused amount.

Claimant elected the fixed amount method of TQSE reimbursement. Consequently, claimant's travel authorization stated that claimant "selected the fixed rate method for temporary quarters in the amount of \$8667." In a subsequent e-mail message to claimant, the agency financial analyst stated that:

The fixed rate for temporary quarters is a flat rate. You can file your voucher for temporary quarters as soon [as you] go into temporary quarters. You do not have to wait until the 30 days are over before you file your voucher.

Claimant moved to his new duty station. The agency describes what happened next:

Although the employee was authorized reimbursement of temporary quarters for [thirty] days using the fix[ed] rate reimbursement method, the employee entered his permanent residence at the duty station after spending only [three] days in temporary quarters.

Claimant filed a voucher in the amount of \$8667 for TQSE reimbursement. The agency granted \$709.50 of that amount, based on a three-day stay in temporary quarters.

Claimant purchased a house at his new duty station and incurred real estate transaction expenses that included \$405 for a funding and review fee. The agency questioned that expense. In its submission to the Board, the agency stated it would reimburse the expense if claimant could produce a letter from the lender that the fee was a precondition for completion of the purchase. Subsequently, claimant submitted a statement from the lender that the funding and review fee "is a fee that is [a] required precondition for the completion of the resident purchase. This fee is required on every residential loan."

Discussion

Temporary Quarters Subsistence Expense

_____ Statute provides in pertinent part:

Under regulations prescribed under section 5738, an agency may pay to or on behalf of an employee who transfers in the interest of the Government--

. . . .

an amount for subsistence expenses, that may not exceed a maximum amount determined by the Administrator of General Services, instead of the actual subsistence expense authorized in subparagraph (A) of this paragraph.

5 U.S.C. § 5724a(c)(1)(B) (2000).

Pursuant to the above statutory authority, the FTR in effect at the time claimant reported for duty, and in effect today, provides in pertinent part in its question and answer format:

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.

41 CFR 302-6.200 (2003). The FTR provides that the amount of payment is determined for the transferred employee by taking the number of days the agency authorizes TQSE and multiplying that number of days by .75 of the maximum per diem rate prescribed in chapter 301 of the FTR for the locality of the new official station. Id. 302-6.201.

Additionally, and significantly, the FTR provides:

May I retain any balance left over from my TQSE reimbursement if my fixed amount is more than adequate?

Yes, if your fixed TQSE amount is more than adequate to cover your TQSE expenses any balance belongs to you.

41 CFR 302-6.203. This provision was added by FTR Amendment 98 and was effective February 19, 2002. See 66 Fed. Reg. 58,194 (Nov. 21, 2001). The General Services Administration explained in the Federal Register that the purpose of the amendment, as it pertained to TQSE, was to redesignate allowances as part 302-6 and to "[add] a new question 302-6.203 which clarifies that any balance, after expenses incurred under fixed amount reimbursement belongs to the employee." Id.

The FTR provides that the agency has the discretion to offer the fixed amount method of TQSE reimbursement. 41 CFR 302-6.200. The FTR also states that agencies must

balance several factors in determining whether to offer that method. Those factors include the greater ease of administration of the fixed amount method, the relative costs of each method, taking into account the maximum time allowed under the fixed amount method as against the 120-day maximum of the actual expense method. Id. 302-6.304.

Before claimant's transfer, the agency offered him the choice of TQSE reimbursement under the actual expense method or \$8667 for thirty days of fixed amount TQSE reimbursement. After claimant chose the fixed amount method, the agency granted claimant the lump sum of \$8667 in its travel authorization.

The agency's action--well after claimant's transfer--of reducing claimant's TQSE fixed amount reimbursement violated 41 CFR 302-6.203, which entitles employees to retain the balance of their fixed amount TQSE reimbursement if their reimbursement is more than adequate. Lori Giannantonio, GSBCA 16208-RELO, 04-1 BCA ¶ 32,466. The agency financial specialist correctly advised claimant that he could keep the whole reimbursement amount if he spent less than thirty days in temporary quarters.

The agency argues:

The purpose of the temporary quarters expense allowance . . . is to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters. We believe that the employee received equitable reimbursement for the time spent in temporary quarters since temporary quarters expenses were not incurred beyond [three] days. Because temporary quarters expense allowance is a discretionary allowance, once the agency had documentation indicating that the household goods were delivered to the permanent residence, it no longer was reasonable to pay for the remaining [twenty-seven] days of temporary quarters allowance.

The agency relies on unnamed Board precedent for its position. Two Board decisions approved an agency's after-the-fact reduction in claimant's fixed amount reimbursement, but those decisions are not controlling.

The first decision is Richard J. Anderson, GSBCA 15870-RELO, 03-1 BCA ¶ 32,149. In that case, the agency had not, at the time of the employee's transfer, adopted any policy for implementation of the fixed amount TQSE reimbursement method, and had not, as required by the FTR, given the employee a choice of the actual expense or fixed amount method for TQSE reimbursement. We concluded that the agency was required to afford the employee the choice retroactively, i.e., after the employee had completed his relocation. Then, the agency knew the length of time the employee had spent in temporary quarters. We concluded that given the retroactive nature of the reimbursement offer, the agency could not rationally offer the claimant thirty days fixed amount TQSE reimbursement knowing after the fact the number of days claimant had stayed in temporary quarters. Anderson, 03-1 BCA at 158,949.

Anderson involves unusual, and perhaps unique, facts. This case is different. Here, before claimant's transfer, the agency offered claimant thirty days of TQSE reimbursement when claimant chose the fixed amount method. Therefore, claimant's selection of the fixed amount TQSE reimbursement method relieved the agency of the administrative burden of evaluating the reasonableness of claimant's TQSE or of the length of time claimant stayed in temporary quarters.

The second case upon which the agency relies is Jeffrey J. Scussel, GSBCA 15696-RELO, 02-1 BCA ¶ 31,783. That decision construed the 2001 version of the FTR; in fact, the Board issued its decision five days before the effective date of the revised version of the FTR, which added the provision codified at 41 CFR 302-6.203. Scussel is simply not applicable because it construed an earlier and obsolete version of the FTR that does not govern claimant's TQSE reimbursement. The 2003 version of the FTR, which we have discussed above, governs claimant's entitlement because that version was in effect when he reported to his new duty station. 41 CFR 302-2.3.

The agency does have discretion to offer the fixed amount method of TQSE reimbursement for up to thirty days, as opposed to the actual expense method. 41 CFR 302-6.200. However, as indicated by the language of 41 CFR 302-6.200 and 302-6.304, the

determination to offer the fixed amount method of reimbursement and for how many days to offer it are clearly prospective, and the agency must make those determinations in advance. Since the agency offered claimant thirty days of TQSE reimbursement at \$8667, the agency may not change its mind after claimant completed his stay in temporary quarters. Claimant is entitled to be reimbursed \$8667, regardless of his three-day stay in temporary quarters.

Real estate transaction expense

The agency agreed to pay the funding and review fee if claimant provided information from the lender that the fee was a precondition of purchase. The lender has provided the documentation and we take the agency at its word. Since the claimant has provided the requested documentation, the matter is no longer in dispute and is moot.

Decision

The claim is granted in part. The agency owes claimant an additional \$7957.50 for TQSE expenses. The funding fee portion of the claim is dismissed.

ANTHONY S. BORWICK
Board Judge