

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

September 22, 2004

GSBCA 16437-RELO

In the Matter of JOEL WILLIAMS

Joel Williams, Albuquerque, NM, Claimant.

Rick Miller, Civilian Travel and Overseas Allowances, Compensation and Legislation Division, Office of the Chief of Staff, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

PARKER, Board Judge.

Background

When Joel Williams was transferred by the Department of the Air Force from Los Angeles, California, to Kirtland Air Force Base, New Mexico, he was offered a choice between having his temporary quarters subsistence expenses (TQSE) reimbursed under the "actual expense" or the "fixed amount" method. The permanent change of station guide provided to Mr. Williams explained that, under the fixed amount method, the employee is paid a fixed amount to cover TQSE for up to thirty days, with no extensions allowed.

Mr. Williams elected the fixed amount method, and was authorized thirty days of TQSE. Unfortunately, because of holidays and mortgage company employees' vacations, the closing on Mr. Williams' new home was delayed. Mr. Williams informed someone from the "financial management support flight in the reimbursement section" of the delay, and was told that there was "no problem." Ultimately, Mr. Williams stayed in temporary quarters for twelve days beyond the allowed thirty days.

The Air Force denied Mr. Williams' subsequent claim for an additional twelve days of TQSE reimbursement, and he has asked the Board to review that decision.

Discussion

When an agency, in the interest of the Government, transfers an employee from one permanent duty station to another, the agency may reimburse the employee for the

subsistence expenses the employee incurs while occupying temporary quarters. 5 U.S.C. § 5724a(a)(3) (2000); 41 CFR pt. 302-6 (2003). If an agency decides to reimburse an employee for TQSE, it can give the employee the option of being reimbursed in accordance with either the fixed amount method or the actual expense method. The fixed amount method provides an employee with a fixed amount for up to thirty days, regardless of the employee's actual expenses. If TQSE is reimbursed according to the fixed amount method, the agency is prohibited from making any extensions to the TQSE period and the employee will receive no additional reimbursement if the fixed amount does not cover his TQSE.¹ 41 CFR 302-6.200, -6.202; Jeffrey D. Vance, GSBCA 16016-RELO, 03-2 BCA ¶ 32,317. Because Mr. Williams elected to be reimbursed under the fixed amount method, the thirty-day TQSE period granted by his agency may not be extended.

Nor may Mr. Williams' travel orders be retroactively amended to allow reimbursement under the actual expense method. It is well-settled that an agency may not retroactively change a travel authorization from the fixed amount method to the actual expense method. Samuel E. Jones, GSBCA 15770-RELO, 02-2 BCA ¶ 31,897. To do so would violate a basic rule concerning the amending of travel orders:

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 (quoting William D. Hammers, B-234696 (Nov. 3, 1989)).

The law is clear that Mr. Williams may not be paid for the claimed twelve extra days of TQSE. The fact that he may have received advice to the contrary, although unfortunate, does not change this result. Erroneous advice provided by Government officials cannot provide a basis for reimbursement where no independent authority for such reimbursement exists. E.g., Masood Badizadegan, GSBCA 14393-RELO, 98-2 BCA ¶ 29,789; Kevin S. Foster, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996).

Decision

¹The actual expense method provides an employee with reimbursement for his or her actual expenses, within certain limits, for up to sixty days. If TQSE is reimbursed according to the actual expense method, the agency may extend the TQSE period for up to a maximum of 120 days, if the agency determines there is a compelling reason for the employee to continue to occupy temporary quarters after sixty days. A compelling reason is an event that is beyond the employee's control and that is acceptable to the agency. Examples include being unable to occupy a permanent residence due to unanticipated problems, such as a delay in settlement on the permanent residence or a short-term delay in construction. 41 CFR 302-6.100, -6.104, -6.105.

The claim is denied.

ROBERT W. PARKER
Board Judge