

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 16, 2006

GSBCA 16772-RELO

In the Matter of ALBERTA J. KEMPER

Alberta J. Kemper, Chapel Hill, NC, Claimant.

JoAnne Rountree, Supervisor, Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

DANIELS, Board Judge (Chairman).

The position of the Department of Veterans Affairs (VA) as to a claim by its employee Alberta J. Kemper for temporary quarters subsistence expenses (TQSE) is perplexing. The agency says that it has reimbursed Ms. Kemper for the maximum amount of TQSE permissible, but according to the documentation provided, it has done no such thing. Because the VA's failure to make full payment is not justified, we conclude that the agency is obligated to pay the remainder of Ms. Kemper's claim (if it has not already done so).

The VA transferred Ms. Kemper from Florida to Tennessee in June 2005. In so doing, it authorized payment to Ms. Kemper of actually-incurred TQSE. By successive authorizations, the agency promised to reimburse the employee for TQSE for a period of up to 120 days. Ms. Kemper asked to be reimbursed a total of \$14,285 for expenses incurred by her and her husband over a period of 112 days. According to the evidence submitted, the VA has paid her only \$11,705 -- \$2580 less than the amount claimed.

The VA first contended that it should pay less than the amount claimed because the amounts Ms. Kemper and her husband paid for meals was excessive. After the employee explained that due to her husband's special dietary requirements, he had to order restaurant

meals which deviated from standard menu offerings, and this increased costs, a VA director who is identified as “Approving Official” responded, “Based on situation described . . . meals appear reasonable.” The official subscribed to the statement, “This is to verify that the meal amounts are customary and reasonable for the size of the family in this area.” The agency has never disavowed this statement. Nevertheless, one of its auditors has continued to assert, “Meal amounts are/still appear to be excessive.” This contention is unsupported by any evidence and flies in the face of the only reasoned conclusion reached by any agency official as to the matter.

The Federal Travel Regulation (FTR) establishes the maximum amount that Ms. Kemper may be reimbursed for TQSE she incurred on each day that she and her husband lived in temporary quarters as a result of her transfer. This amount is, for each of the first thirty days, the standard Continental United States per diem rate for her and three-quarters of that rate for her husband; and for each succeeding day, three-quarters of that rate for her and half of that rate for her husband. 41 CFR 302-6.100, -6.102 (2005). The standard Continental United States per diem rate was \$91 during most of Ms. Kemper’s stay in temporary quarters (June 29 through September 30, 2005) and \$99 during the remainder of her stay (October 1 through 18, 2005). (These rates are available on the General Services Administration’s travel management website.) The maximum amount that Ms. Kemper may be reimbursed for TQSE during her 112 days in temporary quarters is \$14,285.

This maximum amount is the exact amount the employee has claimed. The agency has not contended that she actually incurred less expenses than this sum. Its approving official has rejected the only substantive reason advanced for refusing to make full payment. Instead, the agency maintains that it has paid the entire amount of the claim – which, based on documentation in the record, it has not. Additionally, the VA seems to believe, based on section 302-6.105 of the FTR, that it may pay more than the maximum if there is a “compelling reason” for doing so. This last surmise is based on a misunderstanding of the regulation. The FTR specifically states that an agency may not reimburse an employee for more than the “maximum allowable amount” of TQSE . 41 CFR 302-6.100. The regulation separately permits an agency to extend the period of a transferred employee’s eligibility for reimbursement of TQSE beyond the originally-authorized period, up to a total of 120 days, if it finds a “compelling reason” warranting extension of the period. *Id.* 302-6.105; *see also id.* 302-6.104. A finding of a “compelling reason” is grounds not for paying more than the maximum allowable amount, but rather, for extending the period of eligibility.

Decision

The claim is granted. The VA shall pay to Ms. Kemper the amount of TQSE reimbursement it appears to have withheld from her without good cause – \$2580 – if it has not already done so.

STEPHEN M. DANIELS
Board Judge