

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 6, 2006

GSBCA 16845-RELO

In the Matter of JOANNE M. BARRY

Joanne M. Barry, Alexandria, VA, Claimant.

Shirley L. Autry, Deputy Director, Finance, United States Army Corps of Engineers Finance Center, Millington, TN, appearing for Department of the Army.

HYATT, Board Judge.

Claimant, Joanne M. Barry, a civil engineer employed by the United States Army Corps of Engineers, has asked the Board to review the agency's denial of her claim for reimbursement of temporary quarters lodging expenses incurred in connection with her relocation from the Corps' New England Division in Massachusetts to the Corps' Institute for Water Resources, located in Alexandria, Virginia.

Background

Ms. Barry's travel orders were issued on September 27, 2005, with a report date at her new duty station of October 4, 2005. In connection with the transfer, she was initially authorized sixty days of actual expense temporary quarters subsistence expenses (TQSE). For the first two months that she resided in temporary quarters, Ms. Barry stayed in conventional temporary lodging in Alexandria with receipts provided by Sojourn Housing.

It cost nearly \$3000 per month to rent temporary quarters from Sojourn. When the Corps authorized an additional thirty days of TQSE for December 2005, Ms. Barry investigated more economical options. She located a listing through a web service for the sublease of a room in another apartment in Alexandria, Virginia. She was able to sublet this room from the tenant, Sona Isharani, for \$1100 a month, with the right to terminate the sublease upon thirty days notice. Ms. Barry also states that Ms. Isharani had rented the room previously to another tenant.

When claimant submitted a request for reimbursement of the temporary lodging expenses she incurred in December 2005, the Corps asked her to provide a more detailed receipt. In response to this request, she provided her bank records and a receipt from Ms. Isharani, who confirmed in writing that she had received a payment of \$1100 in rent from Ms. Barry for December 2005 and further stated that she was not related to Ms. Barry nor was she acquainted with Ms. Barry prior to subletting space in the apartment to her.

The Corps rejected Ms. Barry's claim for reimbursement of this lodging expense, citing a provision of the Joint Travel Regulations (JTR's) that proscribes reimbursement of lodging expenses for accommodations provided by friends or relatives or non-conventional sources.

Discussion

The Corps relies on JTR C4555.B.3 and B.4 as the justification for disallowing claimant's lodging expenses for December 2005. These provisions, which mirror and supplement their counterparts in the Federal Travel Regulation (FTR), provide, respectively, that "[r]eimbursement of lodging cost when staying with friends or relatives is not authorized" and that "[t]he cost of non-conventional commercial facilities is allowed," but only under appropriate circumstances. JTR C4555.B.4 defines non-conventional facilities as including college dormitories, similar facilities, and rooms generally not offered commercially that are made available to the public by area residents in their homes. *See generally* 41 CFR 301-11.12 (2005). The comparable FTR provision permits reimbursement of non-conventional lodging expenses when conventional lodging is unavailable or in short supply because of an influx of attendees at a special event.

The Corps appears to have identified these two provisions because Ms. Barry's transaction does not clearly fall under conventional lodging or Government quarters, which are routinely approved for reimbursement. Here, Ms. Barry dealt with a private, rather than commercial, source in obtaining her accommodations for December 2005. The Board has noted, in a recent decision issued on this subject, that:

The analysis does not necessarily end here, however. In cases involving similar issues, the Board has observed that the underlying concern when an employee secures lodging from a private source is "whether the expenses claimed were actually spent for the lodgings or were merely transfers of money arranged for the purpose of supporting a claim against the Government and thereby enriching both the employee and the host." *Guy E. Merrier*, GSBCA 13795-RELO, 97-1 BCA ¶ 28,925; *accord Matthew D. Murphy*, GSBCA 16326-RELO, 04-1 BCA ¶ 32,572; *Donald Mixon*, GSBCA 14957-RELO, 00-1 BCA ¶ 30,606 (1999). Thus, the Board has upheld the agency's disallowance of payments when it appeared the transaction was not conducted at arm's length. *See, e.g., Javier R. Hernandez*, GSBCA 15338-TRAV, 00-2 BCA ¶ 31,139 (room rented from brother not reimbursable when brother does not routinely rent out rooms in his home). On the other hand, if a room is rented from a stranger who has advertised its availability, this evidences a business, rather than personal, relationship, and the expense may be reimbursed. *Michael S. Knezevich*, GSBCA 14398-TRAV, 98-1 BCA ¶ 29,607.

Theresa E. Kanter, GSBCA 16670-TRAV, 06-1 BCA ¶ 33,224.

Ms. Barry has provided a receipt for the rent paid, and her own statement, as well as Ms. Isharani's signed, written confirmation that this was a business transaction and that there was no prior personal relationship between the two. In addition, Ms. Barry has stated that she learned about the room on a web site listing and that Ms. Isharani had previously rented the room to someone else. The Corps has not countered or taken issue with these statements. On the record we have, claimant has met her burden to show that this was a business relationship. Accordingly, this expense should be considered eligible to be reimbursed.

Decision

The claim is granted.

CATHERINE B. HYATT
Board Judge

