

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 18, 2006

GSBCA 16903-RELO

In the Matter of EMMANUEL J. BRADLEY

Emmanuel J. Bradley, APO Area Europe, Claimant.

Judy Hughes, Travel Management and Procedures Office, Defense Finance and Accounting Service, Columbus Center, Columbus, OH, appearing for Department of Defense.

GOODMAN, Board Judge.

Claimant, Emmanuel J. Bradley, is a civilian employee of the Department of Defense. He has asked that this Board review the agency's denial of reimbursement of costs incurred during a permanent change of station (PCS) move.

Factual Background

Claimant performed a PCS move from the Defense Contract Audit Agency (DCAA), European Branch Office, Wiesbaden, Germany, where he had served a three-year tour of duty with his family, to DCAA, European Branch Office, Saudi Arabia, where he was to serve a twelve-month unaccompanied tour.

On October 4, 2005, DCAA issued a PCS travel authorization to claimant authorizing "travel between official stations" from Wiesbaden, Germany, to his home in Mississippi with no new permanent duty station (PDS) shown on the travel authorization. Claimant states that he was told when he was selected for his duty in Saudi Arabia that he would be allowed to return his family and his household goods to Mississippi, with the same entitlement as if he

too were returning to the continental United States (CONUS).¹ This travel authorization contained authorization for temporary quarters subsistence expenses (TQSE) of a fixed amount for thirty days. On November 4, 2005, before he departed from Germany, DCAA issued another PCS authorization to authorize travel from claimant's home in Mississippi to DCAA, Saudi Arabia. Claimant departed Germany on December 12, 2005, and reported for duty in Saudi Arabia on January 9, 2006, traveling from Germany to Saudi Arabia via his home in Mississippi, where his dependents stayed during his unaccompanied tour.

Claimant's claim for TQSE was not paid by the agency, as the agency asserted that there is no entitlement to TQSE when the employee is being transferred from one outside CONUS (OCONUS) duty station to another. Claimant has asked this Board to review the agency's denial.

Discussion

The agency based its denial of TQSE on the following provisions of the Federal Travel Regulation (FTR) and Joint Travel Regulations (JTR). FTR 302-6.4 states:

Am I eligible for TQSE allowance?

You are eligible for TQSE allowance if you are an employee who is authorized to transfer; and

- (a) Your new official station is located within the United States; and
- (b) Your old and new official stations are 50 miles or more apart (as measured by map distance) via a usually traveled surface route.

41 CFR 302-6.4 (2005).

Since Mr. Bradley's new official station is Saudi Arabia, the agency determined that he and his dependents are not entitled to this allowance. Further, FTR 302-6.17 states:

¹ According to a letter dated April 10, 2006, from Mr. Edward F. Nelson, Regional Director, DCAA Northeastern Division, DCAA's Saudi Arabia office is very difficult to staff and claimant accepted the reassignment to that office with the understanding that he would be allowed to return his family and belongings to his home prior to reporting to his new duty station. Claimant's home was in an area affected by Hurricane Katrina and DCAA strongly believed that he needed to return home prior to going on to his new duty station.

Am I eligible for a TQSE allowance if I transfer to a foreign area?

No, you may not receive a TQSE allowance under this part when you transfer to an area outside the United States. However, you may qualify for a comparable allowance under the Standardized Regulations prescribed by the Department of State.

41 CFR 302-6.17.

The agency also cites JTR C5356-A, which contains the conditions for authorizing TQSE for an employee and each dependent, and notes that claimant does not meet these conditions. The agency also refers to JTR C5356-C, which states that TQSE is not authorized for an employee performing Renewal Agreement Travel, except when returning to a different, non-foreign OCONUS PDS.

In denying claimant's request for TQSE, the agency concluded:

We understand that DCAA appreciated the fact that Mr. Bradley volunteered to take the hard to fill position in Saudi, and that they wished to provide him all relocation benefits allowable to him, however, the A[uthorizing]O[fficial]'s authority does not extend to the point of allowing expenses that are contrary to the FTR and JTR.

Claimant's response in this case was submitted by his supervisor on his behalf. His supervisor states:

While we understand the JTR references provided by the Defense Finance and Accounting Service (DFAS), it is our opinion that this situation is unique and is not covered in the JTR. The JTR does not address a situation where an employee is already Overseas on an accompanied tour, then accepts an unaccompanied tour where the dependents are required to return to their home of record in the United States. In this situation, the dependents would require TQSE while awaiting shipment of their household goods, the same as if the employee had returned with his family to a PDS in the United States. We understand that the dependents' entitlements are derived from the employee and his type of transfer. However, the fact that Mr. Bradley accepted an unaccompanied tour does not diminish the fact that his dependents required TQSE. It is because of Bradley's acceptance of the unaccompanied tour in Saudi Arabia that his family was required to return to the United States, and Bradley and his family should be allowed the same entitlements had Mr. Bradley PCS'd back to his home of record.

In regard to [Renewal Agreement] travel, which DFAS also raised, this does not address the issue at hand. The issue remains as to whether or not Mr. Bradley's family should be allowed TQSE while awaiting shipment of their household goods.

We do not feel that we have authorized expenses that are contrary to the JTR; rather, we have authorized expenses that certainly are fair and consistent with the intent of TQSE, although not specifically addressed in the JTR. We strongly recommend a JTR change and approval of TQSE for Bradley and his family.

Unfortunately, as the agency explains, there is no statutory or regulatory authority to compensate claimant for TQSE in this situation, and the Board has no authority to order it to do so. However, this Board understands that it was claimant's supervisor's intent to compensate claimant for expenses incurred that appear to be reasonable under the circumstances, as claimant accepted a difficult assignment. We note the suggestion in FTR 302-6.17 that an employee transferring OCONUS may qualify for an allowance comparable to TQSE under the Standardized Regulations prescribed by the Department of State (DSSR). The agency might examine the DSSR with an eye toward determining whether any of the allowances provided therein could be payable to claimant in lieu of the promised TQSE.

Decision

The claim for TQSE is denied.

ALLAN H. GOODMAN
Board Judge