

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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August 14, 2006

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GSBCA 16907-RELO

In the Matter of STEVEN C. SMITH

Steven C. Smith, Atlanta, GA, Claimant.

Jani Willis, Executive Director, Heartland Finance Center, General Services Administration, Kansas City, MO, appearing for General Services Administration.

**DANIELS**, Board Judge (Chairman).

The General Services Administration (GSA) transferred Steven C. Smith to Atlanta, Georgia. Before moving there, Mr. Smith and his wife took a househunting trip in April 2006. The Smiths rented two suites in a hotel during their stay in Atlanta, and the employee asked the agency to pay for the costs of both suites. GSA has agreed to pay for only one. Mr. Smith asks us to reverse this decision.

Mr. Smith explains that he and his wife reserved two suites because they both snore and neither can sleep when they are in the same room. He says that he reserved two one-bedroom suites and that when he arrived in Atlanta, the hotel assigned him one one-bedroom suite and one two-bedroom suite. He acknowledges that his children accompanied him and his wife on the trip. He says, however, that the presence of the children had no impact on his decision to rent two suites or his request that the Government reimburse costs he incurred. (The point is important because the Federal Travel Regulation (FTR) permits only a transferring employee and his or her spouse to travel at government expense on a househunting trip. 41 CFR 302-5.7 (2005).) Mr. Smith observes that no provision of the FTR specifically addresses his situation. He contends that because the cost of the two suites, per day, is less than the total maximum amount permitted for lodging in Atlanta for a couple on a househunting trip, he should be reimbursed for the cost of both suites.

GSA reimbursed Mr. Smith for the cost of the two-bedroom suite. The agency is concerned that he rented a second suite so that his children would have a separate place in which to sleep. If the children had not been present, the agency contends, Mr. Smith and his wife could each have slept in one of the bedrooms of the two-bedroom suite. According to the FTR, an employee “must exercise the same care in incurring [travel] expenses that a prudent person would exercise if traveling on personal business.” 41 CFR 301-2.3 (2005). GSA denied Mr. Smith’s claim because it believes that a prudent person, needing two bedrooms for two people to sleep, would not have rented more than a two-bedroom suite.

Mr. Smith is correct in believing that no provision of the FTR specifically addresses his situation. GSA is correct, however, in suggesting that application of the overarching “prudent person rule” makes sense where, as here, no specific provision applies. What a “prudent person” would do in a particular circumstance is defined by an objective, not a subjective, test. *See, e.g., Chao v. Merino*, 452 F.3d 174, 182 (2d Cir. 2006) (fiduciary obligations of trustees of pension benefit plans); *United States v. Rhiger*, 315 F.3d 1283, 1289 (10th Cir.), *cert. denied*, 540 U.S. 836 (2003) (actions of law enforcement officers); *United States v. Brown*, 188 F.3d 860, 866 (7th Cir. 1999) (same); *Neonatology Associates, P.A. v. Commissioner of Internal Revenue*, 299 F.3d 221, 233 (3d Cir. 2002) (negligence standard in tax law – same as in tort law). Consequently, in determining whether Mr. Smith’s decision to rent two suites rather than one was prudent, we put ourselves in the shoes of the objective “reasonable man,” not those of Mr. Smith (who of course considers his actions to have been prudent). We agree with GSA that it was not prudent to rent more than a two-bedroom suite as quarters for two people who needed separate rooms in which sleep.

We therefore deny the claim.

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STEPHEN M. DANIELS  
Board Judge