

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 16, 2006

GSBCA 16911-RELO

In the Matter of DANIEL D. LaCHANCE

Daniel D. LaChance, Albuquerque, NM, Claimant.

Colonel Mary Beth Shively, Chief of Staff, Department of the Army, Fort Huachuca, AZ, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant, Daniel D. LaChance, is a civilian employee of the Department of the Army. He has asked this Board to review the agency's decision denying reimbursement of temporary quarters subsistence expenses (TQSE) arising from a permanent change of station (PCS) move.

Factual Background

Claimant has been issued travel orders for a PCS transfer from his current permanent duty station (PDS) outside the continental United States (OCONUS), in Germany, to a new PDS in the continental United States (CONUS). The agency did not authorize reimbursement of TQSE and claimant requested that it do so. The agency denied his request, stating that the decision not to authorize reimbursement of his TQSE was an exercise of agency discretion, based upon "fiscal responsibility emanating from current budget and funding reductions."

Claimant believes that reimbursement of TQSE is mandatory, based upon his reading of the applicable regulations, and asks this Board to review the agency's decision.

Discussion

Claimant cites to the following provision of the Federal Travel Regulation (FTR), which he believes makes payment of TQSE mandatory for an employee transferred from a PDS OCONUS to another in CONUS:

§302-3.101 As a transferred employee what relocation allowances must my agency pay or reimburse me for incident to a permanent change of station?

As a transferred employee there are mandatory and discretionary relocation expenses. Once an agency decision is made to pay or reimburse relocation expenses indicated for the type of transfer in tables (A) through (I) of this section, all the mandatory allowance must be paid or reimbursed, unless otherwise stated in the applicable parts. The discretionary relocation allowances indicated in tables (A) through (I) of this section may or may not be paid by the agency.

....

Table C: Transfer From OCONUS Official Station to an Official Station in CONUS. . . . Relocation allowances that the agency must pay or reimburse . . . TQSE (Part 302-6 of this chapter)

41 CFR 302-3.101.

Claimant misreads this provision, as it does not make payment of TQSE mandatory. The preamble provides an exception that “all the mandatory allowance must be paid or reimbursed, unless otherwise stated in the applicable parts.” The applicable part referenced in Table C with regard to TQSE is Part 302-6, which provides that the agency need not authorize payment of a TQSE allowance, as the agency may determine whether it is in the Government’s interest to pay TQSE and that an employee will receive TQSE only if authorized before the temporary quarters are occupied. 41 CFR 302-6.6, 6.7.

Authorization of TQSE is discretionary under the FTR, just as it is discretionary under the Joint Travel Regulations (JTR) that govern civilian employees of the military. JTR C5350 states that “TQSE is a discretionary, not a mandatory, allowance.” In *Thomas G. Tucker*, GSBCA 16682-RELO, 06-1 BCA ¶ 33,168, a civilian employee of the military was similarly transferred from a PDS OCONUS to another in CONUS and the agency did not authorize TQSE. As we stated in that decision:

Whether to authorize reimbursement of TQSE to a relocating employee is a determination which is wholly within the discretion of the agency involved. TQSE is therefore a discretionary allowance and not an entitlement. Joint

Travel Regulation (JTR) C13105^[1]; *see Vanessa G. Outenreath*, GSBCA 16316-RELO, 04-2 BCA ¶ 32,681; *Marvin R. McGee*, GSBCA 15829-RELO, 02-2 BCA ¶ 32,002. Claimant's travel orders did not authorize reimbursement for TQSE. While claimant has submitted information from his commanding officer subsequent to his relocation that he interprets as authorization for reimbursement of TQSE, there is no evidence that claimant's travel orders have been amended. Under the present circumstances we cannot conclude that the agency's determination was an abuse of discretion.

06-1 BCA at 164,356-57.

Accordingly, the provision of the JTR which makes authorization of TQSE discretionary does not conflict with the FTR. The agency has decided for financial and budgetary reasons not to authorize claimant to receive TQSE. We cannot conclude that the agency's determination was an abuse of discretion. *Tucker*.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge

¹ This provision was in effect at the time the claimant in *Tucker* reported to his duty station and read substantially the same as the current provision.