

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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March 7, 2002

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GSBCA 15600-TRAV

In the Matter of LAWRENCE A. MAHONEY

Lawrence A. Mahoney, Roy, UT, Claimant.

Brad Thomson, Chief, Travel Pay, Financial Services, Hill Air Force Base, UT,  
appearing for Department of the Air Force.

**HYATT**, Board Judge.

Claimant, Lawrence A. Mahoney, transferred from McClellan Air Force Base in California to Hill Air Force Base in Utah in October 1999. Shortly after the effective date of his transfer, in November 1999, he was sent back to McClellan Air Force Base for a long-term temporary duty (TDY) assignment. Mr. Mahoney stayed at his house near McClellan Air Force Base, which he had not yet sold. He believes the Air Force should reimburse him his lodging expenses while on temporary duty. For the reasons stated, we agree with the Air Force's determination that claimant was not entitled to be reimbursed for lodging under these circumstances.

Mr. Mahoney's claim for lodging reimbursement is based on a provision of the Joint Travel Regulations (JTR) which provides for the payment of certain expenses when a residence is purchased and used for living quarters while an employee is on TDY. JTR C4555-E. Mr. Mahoney has calculated his pro rata mortgage, property taxes, and utility costs on a monthly basis. The Air Force has declined to pay the requested lodging expenses because Mr. Mahoney did not buy the house incident to the performance of the temporary duty assignment.

Discussion

The authority for the payment of per diem to federal employees traveling on official business away from their designated post of duty is derived from 5 U.S.C. § 5702 (2000). This statutory provision is implemented in part 301-11 of the Federal Travel Regulation (FTR), which is supplemented by the JTR for civilian employees of the Department of

Defense. 41 CFR Part 301-11 (1999); JTR ch. 4. As a general rule, the subsistence expenses of an employee on official travel for the Government may be reimbursed to the extent that they are incurred by reason of the travel and are in addition to the usual costs of maintaining a residence. See Bornhoft v. United States, 137 Ct. Cl. 134 (1956); Dimitri & Eugenia Arensbarger, GSBCA 14514-TRAV, 98-2 BCA ¶ 30,055; Durel R. Patterson, B-211818 (Feb. 14, 1984); Sanford O. Silver, 56 Comp. Gen. 223 (1977).

Mr. Mahoney relies on the following provision of the JTR to support his position that he should be reimbursed for lodging expenses while he stayed at his old residence:

E. Allowable Expenses When a Residence Is Purchased and Used for Quarters While on TDY.

An employee who purchases and occupies a residence at a TDY location is entitled to a per diem computed in accordance with the provisions of par. C4553. In determining the employee's daily lodging cost, allowable expenses are the monthly (57 Comp. Gen. 147 (1977)):

1. mortgage interest,
2. property tax, and
3. utility cost actually incurred prorated on a 30-day month basis rather than by the actual number of days the employee occupied the residence.

JTR C4555-E.

The Comptroller General decision referenced in JTR C4555-E is Robert E. Larrabee, 57 Comp. Gen. 147 (1977). In that case, the employee purchased a residence after receiving a relatively long term assignment to a temporary duty location. The initial assignment was for five months and was subsequently extended for two additional six-month periods. During his initial TDY period, Mr. Larrabee purchased a home at the TDY location and moved his family there. Finding that Mr. Larrabee had purchased the home specifically as a result of the TDY assignment, the Comptroller General held that a lodging per diem, calculated by prorating monthly mortgage interest, property taxes and utility costs, could be paid to the employee. The Board has adopted the rationale of Larrabee and applied it in appropriate circumstances where extended TDY is involved. Arensbarger; Thomas J. Dresler, GSBCA 13985-RELO, 98-1 BCA ¶ 29,434 (1997); Donald C. Smaltz, GSBCA 14328-RELO, 97-2 BCA ¶ 29,311.

The Larrabee holding, however, was distinguished in Silver, a claim presenting facts on all fours with this one. In Silver, the claimant transferred from Atlanta, Georgia, to Washington, D.C. Shortly after his transfer, claimant was assigned to temporary duty in Atlanta. Since his family had not yet relocated to the Washington, D.C., area, claimant stayed with his family at his Atlanta residence while on TDY there. In these circumstances, because the residence in Atlanta was not acquired for the purpose of performing temporary

duty assignments in that city, the employee was not entitled to receive lodging per diem while staying at his former home. Accord Danny Sarine, B-201894 (Feb. 13, 1982); Robert S. K. Lee, B-193761 (Aug. 21, 1979). The underlying rationale for this distinction is aptly explained by the Court in Bornhoft:

Every night [while on temporary duty] plaintiff slept in his own bed, ate breakfast in the morning and dinner at night at his own table. A subsistence allowance is intended to reimburse a traveler for having to eat in hotels and restaurants and for having to rent a room in another city while still maintaining his own table and his own permanent place of abode. It is supposed to cover the *extra* expenses incident to traveling.

137 Ct. Cl. at 136.

The JTR provision cited by Mr. Mahoney simply memorializes the rationales of Larrabee and Silver. It is intended to accommodate those circumstances in which an employee acquires a residence for the purpose of performing an extended temporary duty assignment away from his or her permanent duty station. Here, Mr. Mahoney purchased his residence near McClellan Air Force Base prior to his need to perform temporary duty there, and for reasons completely unrelated to the need to travel there in connection with a temporary assignment. Claimant's ownership of this home is not a direct result of the need to perform temporary duty. Fred Frishman, B-186643 (Oct. 28, 1976), reconsideration denied (May 9, 1977). Mr. Mahoney would have incurred the costs of owning the home regardless of his travel status for the temporary duty assignment. Claimant did not incur any additional lodging expenses attributable to his travel status. As such, claimant is not eligible to be reimbursed lodging expenses while staying at his house to perform TDY at McClellan Air Force Base.

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CATHERINE B. HYATT  
Board Judge