

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 24, 2006

GSBCA 16770-TRAV

In the Matter of THERESA E. KANTER

Theresa E. Kanter, Atlanta, GA, Claimant.

Christopher S. Kochitzky, Deputy Director, Division of Human Development, Centers for Disease Control and Prevention, Atlanta, GA, appearing for Department of Health and Human Services.

HYATT, Board Judge.

The Centers for Disease Control and Prevention (CDC) has asked the Board for a decision concerning whether it is authorized to reimburse an employee for certain lodging expenses incurred during a temporary duty assignment (TDY) performed during the period from May to August 2005.

Claimant, Theresa E. Kanter, is a Presidential Management Fellow (PMF) with CDC's National Center on Birth Defects and Developmental Disabilities, assigned to the Office of the Director, Behavioral Science and Health Education Team. The PMF Program is a two-year management and training program for outstanding students. Under this program top-level candidates are recruited by the Office of Personnel Management (OPM) and referred to federal agencies for selection. Participation in the program requires completion of mandatory training, in the form of rotational assignments, some of which involve travel away from the permanent duty station for several months at a time.

This claim arises in connection with Ms. Kanter's second rotational assignment, which took place in Washington, D.C., where she worked for the National Capital Planning Commission. In an effort to minimize costs incurred by her division, Ms. Kanter arranged to sublease apartments for part of her stay in Washington, DC., in lieu of incurring the substantially higher expenses of a local hotel. CDC states that the cost of the subleased apartments was consistent with rates for similar accommodations in the area based on its review of craig's list, an internet classified ad site, and the City Paper's classified ads. Ms. Kanter asked for approval to do this in advance of her travel and was advised that her lodging plan would be approved.

Claimant's travel order for the relevant period states as follows:

The traveler will sublet from May 8 to May 25 (total amount \$425/\$25 a day). The traveler will stay at the Capital Hilton at a rate of \$153 per night. On June 1 to August 8, the traveler will sublease an apartment for a period of 68 days, a total amount of \$2,226 (\$1,000 per month for two months and prorated for 7 days in August).

After completing her rotation, Ms. Kanter submitted a travel voucher. She was denied reimbursement of the subleased lodging expenses, based on the Federal Travel Regulation's (FTR's) limitation on reimbursement of lodging expenses for accommodations provided by friends or relatives.

Discussion

The details provided by the claimant and the agency are sketchy. We gather that the agency finance office's concern arose because of the type of lodging obtained by Ms. Kanter and the guidance provided by the FTR with respect to reimbursement available for five different categories of lodging:

(a) *Conventional lodgings*. (Hotel/motel, boarding house, etc.)
You will be reimbursed the single occupancy rate.

(b) *Government quarters*. You will be reimbursed, as a lodging expense, the fee or service charge you pay for use of the quarters.

(c) *Lodging with friend(s) or relative(s) (with or without charge)*. You may be reimbursed for additional costs your host

incurs in accommodating you only if you are able to substantiate the costs and your agency determines them to be reasonable. You will not be reimbursed the cost of comparable conventional lodging in the area or a flat “token” amount.

(d) *Nonconventional lodging.* You may be reimbursed the cost of other types of lodging when there are no conventional lodging facilities in the area (e.g., in remote areas), or when conventional facilities are in short supply because of an influx of attendees at a special event (e.g., World’s Fair or international sporting event). Such lodging includes college dormitories or similar facilities or rooms not offered commercially but made available to the public by area residents in their homes.

(e) *Recreational vehicle (trailer/camper).* You may be reimbursed for expenses (parking fees, fees for connection, use, and disconnection of utilities, electricity, gas, water and sewage, bath or shower fees, and dumping fees) which may be considered as a lodging cost.

41 CFR 301-11.12 (2005). CDC tells us that its finance office cited subparagraph (c) in support of its position that the costs could not be reimbursed. We are not told why this provision was identified as applicable, but we gather it was chosen because Ms. Kanter’s transaction clearly does not fall into the other four categories of lodging, and she dealt with a private, rather than commercial, source in obtaining her accommodations.

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. Mercier*, 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.

It is not clear from the information provided in connection with this claim whether Ms. Kanter and the individual from whom she sublet the apartment were acquainted prior to entering into the leasing arrangement or not. If Ms. Kanter's sublease was entered into with a friend or relative, further evidence showing that the premises were routinely rented out, or at least that the lessor would have sublet the premises to someone else had Ms. Kanter not rented them, is needed to support payment here. On the facts provided, however, we have no obvious reason to suppose that Ms. Kanter simply arranged to stay with a friend or relative and call it a sublease.

Although Ms. Kanter's documentation in support of her voucher does not include a copy of a formal sublease, other factors, at least on their face, tend to support the conclusion that this was a genuine business transaction. The sublease period is for the summer months, when student-occupied apartments are often available for subleasing purposes. Ms. Kanter has provided copies of canceled checks written to the sublessor to cover the periods in question, including a separate check for a security deposit, with notations on the checks that they represent sublease and security deposit payments for the period from June 1 through August 7. The provision of a check for a security deposit also tends to support the arm's-length nature of the transaction.

If further verification of the bona fide business nature of the transaction is desired by the agency, Ms. Kanter should be asked to provide a written statement explaining how she made the arrangements in question and whether she is related to, or had a prior acquaintance with, the person she subleased the apartment from, and whether that person was residing in the premises during the period of Ms. Kanter's sublease. Assuming there is no basis to find that the sublease was not a bona fide business transaction, and the agency is satisfied the amount paid was reasonable, there is no reason not to reimburse Ms. Kanter in full.

CATHERINE B. HYATT
Board Judge