



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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May 26, 2015

CBCA 4542-RELO

In the Matter of CHRISTOPHER W. HARDING

Christopher W. Harding, Taylorsville, UT, Claimant.

David Hoffman, Deputy General Counsel, Defense Contract Audit Agency, Fort Belvoir, VA, appearing for Department of Defense.

**GOODMAN**, Board Judge.

Claimant, Christopher W. Harding, is a civilian employee of the Department of Defense. He has asked this Board to review the agency's denial of his request for temporary quarters subsistence expenses (TQSE) arising from a permanent change of station (PCS), returning him from Israel to his residence in Utah in June 2014.

Factual Background

Issuance of PCS Orders, Claimant's Travel, and Denial of Claim for TQSE

Before claimant's PCS orders were issued, an agency budget analyst sent claimant two documents. One of the documents, DCAA Form 5000-1 (Form 5000-1), required information concerning relocation travel, including dates and mode of travel, number of vehicles to be shipped, mode of shipment of household goods (HHG), TQSE, house hunting trip, and identities of individuals traveling. The information with regard to TQSE stated:

**Temporary Quarters Subsistence Expense (TQSE)**

Temporary Quarters required     Self    Family  
Actual Expenses - TQSE (AE)    Number of Days Requested: \_\_\_  
Fixed Expenses - TQSE (F)      Max Number of Days is 30

**The type of TQSE Allowance authorized in PCS orders are [sic] at the Approving Official's discretion. Number of days in temporary quarters is reduced by number of days used on House Hunting Trip (HHT) for TQSE(AE). Temporary Quarters is not authorized unless old and new duty stations are more than 50 miles apart.**

When claimant completed Form 5000-1, he did not enter any information with regard to TQSE or indicate a need for TQSE. In the "Remarks" section on the form, claimant entered, "We still have a home in Utah, no need to lease or purchase upon return." In an email message dated March 19, 2014, claimant advised the budget analyst with whom he was communicating: "I still own a home in Utah which I will be returning to . . . no house hunting trip needed or temporary quarters." Claimant's PCS orders, issued on March 31, 2014, did not authorize TQSE.

Claimant states that he departed Israel with his family on Friday, June 13, 2014, spent three days in Washington, D.C., "sight-seeing," and arrived in Utah on June 17, 2014. He and his family lived in the basement of his in-laws' house from June 17, 2014, until his household goods arrived on July 3, 2014.

Claimant submitted his travel voucher to the agency on July 9, including a claim for per diem that the agency denied. He then submitted a claim for TQSE, calculated by the fixed (lump sum) method for 30 days for himself and his family members, totaling \$9840. In communication with the agency, claimant says: "Simply stated, I am requesting that DCAA compensate me for the amount of TQSE Lump Sum (LS) that would have been determined as being needed and warranted."

The agency denied reimbursement of TQSE as not previously authorized. When claimant sought reconsideration of the denial, the agency stated that since TQSE had not been authorized prior to travel, authorization could not be given retroactively. Additionally, the agency stated that the travel orders could only be amended if the agency had erroneously failed to initially authorize the TQSE, but since claimant had not indicated a need for TQSE there had been no error committed by the agency.

#### Claimant's Request for Review and Agency Response

Upon denial of the claim for TQSE, claimant requested that the agency forward his request for review to this Board. Claimant states that before his PCS orders were issued, he had "little or no guidance" in filling out forms for his PCS move. He had inquired from an agency budget analyst as to what he needed to do to receive his PCS orders, and he was only sent two documents to complete. Claimant states that when he received and completed Form

5000-1, and before he accomplished his travel, he did not know the purpose of TQSE and he was not familiar with and did not review the regulations dealing with TQSE. He states that no one from the agency inquired as to whether he and his family might need to occupy temporary quarters before moving into their permanent quarters.

Claimant further states that when he completed Form 5000-1, "I put down information about my family and some basic information about my housing in Israel and back home in Utah. No effort, by DCAA, was made to counsel me on my PCS from Israel to Utah, Per JTR [Joint Travel Regulations] section 5510."

Claimant states further that he did not read the regulations pertaining to TQSE until after he submitted his travel voucher and was denied per diem. He explains:

At this point I read the JTR inside and out, specifically Chapter 5 Part H, that deals with all the facts surrounding TQSE. I want to be completely clear on this point, that until I began my research into TQSE in July of 2014 (well after my PCS from Israel to Utah had taken place) I had never even heard of TQSE other than when I filled out [Form 5000-1] when requested by [the agency budget analyst] as noted above.

Claimant cites JTR 5510, which requires that the agency must provide counseling on travel, transportation and other relocation allowances to all employees prior to a PCS. He faults the agency for violating its own regulations by not providing counseling before his travel commenced and not referring him to the JTR or the agency's PCS guidebook. He states that "[n]o one from DCAA in Israel, Germany, or Northeastern Region's Human Resource or Finance sections ever explained to me what TQSE was or under what circumstances I should request it."

The agency states that before claimant's PCS orders were issued, claimant indicated he did not need temporary quarters. Claimant did not choose TQSE on Form 5000-1 and remarked on the form that he had a home at the new duty station. Claimant also stated in his email communication that temporary quarters were not required. The agency's position is that since statute and regulation require TQSE to be approved before travel occurs, the agency cannot retroactively approve TQSE, unless the agency erroneously failed to include required entitlements. As the agency actions were in response to claimant's indications that he did not require TQSE, the agency argues that it did not commit an error that could be corrected after completion of travel.

### Discussion

Employees who undergo a PCS may receive, at the option of their agency, TQSE payments to cover the cost of lodging and subsistence associated with the PCS move. 5 U.S.C. § 5724a(c) (2012); 41 CFR 302-6.6 (2014). Employees are not automatically entitled to TQSE. *Id.* Rather, the purpose of the TQSE allowance is to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters. 41 CFR 302-6.3; *see also* JTR C5350.

Once an agency decides to allow TQSE reimbursement, the agency will reimburse the employee under what is identified as the actual expense method, unless the agency permits the “lump sum” or fixed amount reimbursement method as an alternative. 41 CFR 302-6.11. Where an agency makes both available, the employee may select the method to be used. *Id.* There are significant differences between the methods, involving both the amount of reimbursement and the duration. The fixed amount method is actually a lump sum payment that provides the employee with a fixed amount for up to thirty days, regardless of the employee’s actual expenses. *See* 41 CFR 302-6.12. In contrast, the actual expense method provides an employee with reimbursement initially for up to a sixty day period. 5 U.S.C. § 5724a(c)(1)(A). That period may then be extended, at the agency’s discretion, for up to an additional sixty days. 41 CFR 302-6.104. The daily rate of reimbursement under the actual expense method is often significantly less than the daily rate (even as adjusted) used to calculate the fixed amount method of reimbursement. 41 CFR 302-6.100 to -.111.

Claimant states that he did not know about TQSE except when he completed his Form 5000-1 and did not read the regulations until after he accomplished his travel. Claimant alleges that had the agency properly counseled him as to entitlement to relocation benefits, he would have been authorized TQSE calculated by the fixed amount, and he has made a claim in the amount of \$9840.<sup>1</sup>

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<sup>1</sup> It is not likely that claimant would have been offered the alternative of TQSE calculated by the fixed method, or that claimant would have been entitled to TQSE for the entire period claimed. Had claimant disclosed his intent to visit Washington, D.C., en route to Utah, TQSE would not have been granted for that time period, as the place of TQSE must be in reasonable proximity to claimant’s new duty station. 41 CFR 302-6.9. Additionally, had claimant disclosed his intent to lodge with his in-laws at the new duty station until his HHG arrived, entitlement to TQSE when lodging with relatives, if authorized, is limited to additional costs actually paid to the host by the employee that the host incurs in accommodating the employee, not a sum equal to commercial lodging. 41 CFR 301-11.12(a)(3). (This provision, while pertaining to temporary duty allowances, has been

This Board addressed a similar situation in *Elizabeth D. Gosselin*, CBCA 2208-RELO, 11-2 BCA ¶ 34,876. In that case, the employee received a form, similar to the Form 5000-1 received by claimant, with a section entitled TQSE with boxes in which to select the method of calculation. The employee alleged that the agency failed to provide her guidance which she considered adequate in order to make a selection of TQSE between the fixed method or the actual expense method. She selected the actual expense method, but thereafter attempted to calculate her reimbursement by the fixed method.

In denying the claim, this Board noted that the information on the form received from the agency gave the employee notice of the existence of TQSE and the two methods of calculating TQSE. The Board held that the regulations bound the employee when the regulations clearly set out requirements, whether or not the employee received adequate advice from the agency:

It is well settled by this Board that where regulations clearly set out requirements, an employee is bound by those regulations, even if the employee relied to his or her detriment upon directions from government officials to the contrary. The Board cannot enlarge a claimant's rights beyond the parameters set out in regulation, even if the employee is misled by Government actions. . . . In the case of Ms. Gosselin, no erroneous or improper advice has been identified. Rather, her claim is based upon her assertion that the Government was obligated to provide her adequate guidance and did not. . . . [I]t is clear from the record that TQSE regulations defined the terms at issue, and had Ms. Gosselin read and consulted the regulations she would have been on notice of the consequences of her choice.

11-2 BCA at 171,537.

As in *Gosselin*, claimant alleges the agency failed to give him adequate advice before he made his decision. While he states he did not know what TQSE was for, claimant was clearly on notice of the possibility of entitlement to TQSE by the information on Form 5000-1. Had he read and consulted the regulations, he would have realized, based on his circumstances, that he might want to apply for TQSE entitlement.

However, claimant did not complete any information on the form as to TQSE, nor did he review the TQSE regulations when he received the form. In the "remarks" section of the

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held to apply for relocation benefits. *Frank J. Salber*, GSBCA 16836-RELO, 06-2 BCA ¶ 33,330.)

home he stated he had a home in Utah and in an email message to the agency budget analyst before his PCS orders were issued, he stated that he did not require TQSE. As the agency will only allow TQSE if it is necessary for claimant to occupy temporary quarters, the agency reacted appropriately to claimant's representations which indicated that claimant did not need to occupy temporary quarters.<sup>2</sup>

Claimant asks this Board to grant his claim to prevent the agency from failing to advise employees in the future. The Board cannot enlarge a claimant's rights beyond the parameters set out in regulation, even if the employee is misled by Government actions. As TQSE must be authorized before travel commences, this Board cannot grant entitlement retroactively. *Gosselin*.

### Decision

The claim is denied.

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ALLAN H. GOODMAN  
Board Judge

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<sup>2</sup> Claimant cites decisions which allow for correction of travel orders after travel is completed when errors are obvious on the face of the orders or provisions intended to be included were omitted. In this case, there are no obvious errors or omissions in claimant's PCS orders.