UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 16, 2016

CBCA 4946-RELO

In the Matter of GEORGE PANOS

George Panos, San Diego, CA, Claimant.

Charlotte L. Lawson, Human Resources Director, United States Naval Support Activity Souda Bay, FPO Area Europe, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

The Department of the Navy asks us to reconsider our decision in *George Panos*, CBCA 4946-RELO, 16-1 BCA ¶ 36,352. In that decision, we concluded that the claimant is entitled to a temporary quarters subsistence allowance (TQSA) for the days his family members stayed in a hotel in Greece before joining the claimant, who had been transferred, at his new post in California.

In deciding the case, we considered fully the arguments made by both parties as to Mr. Panos' eligibility for the allowance he sought. Those arguments dealt with the availability of TQSA to federal civilian employees transferred to or from posts abroad. The Navy makes a new and different argument in requesting reconsideration: Mr. Panos is ineligible for TQSA because he was hired locally in Greece and was not eligible to receive a living quarters allowance (LQA) while he was stationed there.

The usual rule of judicial tribunals in considering motions for reconsideration is that "[a] motion for reconsideration should not be used as a vehicle to present authorities available at the time of the first decision or to reiterate arguments previously made." *Delaware Valley Floral Group, Inc. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1384 (Fed. Cir. 2010). Indeed, "[a]n argument made for the first time in [such a] motion . . . comes too late and is ordinarily deemed waived." *Golden Bridge Technology, Inc. v. Apple Inc.*, 758 F.3d 1362, 1369 (Fed. Cir. 2014). A tribunal is always free to consider such an argument,

however, to correct clear error or prevent manifest injustice. *Id.*; *Delaware Valley*, 597 F.3d at 1383; *Columbia Construction Co. v. General Services Administration*, CBCA 3258-R, 15-1 BCA ¶ 36,007; *Robert A. Schoenberg*, CBCA 3695-RELO, 15-1 BCA ¶ 35,815 (2014).

We are convinced that the Navy's new argument is correct and that Mr. Panos was not eligible for TQSA upon the occasion of his transfer. Our initial decision was clearly erroneous and must be corrected.

The Department of Defense's Joint Travel Regulations (JTR) provide that "[a]n employee is authorized TQSA for temporary [quarters] occupied . . . immediately preceding final departure from [a permanent duty station in a foreign area] if the employee is eligible for a [LQA] under the provisions in the DoDI [Department of Defense Instruction] 1400.25, Volume 1250 and DSSR [Department of State Standardized Regulations] Section 031.1." JTR 1257. Under DoDI 1400.25, Volume 1250, and DSSR 031.1, employees who were recruited outside the United States are eligible for LQA only under very limited circumstances. The Navy asserts, and Mr. Panos does not deny, that as a local hire in Greece, he was not eligible for LQA. Consequently, pursuant to JTR 1257, when he moved to California, he was not eligible for TQSA – for the family members who incurred the costs for which he seeks reimbursement, or for anyone else. *Danny Ray Baize*, CBCA 2021-RELO, 12-1 BCA ¶ 35,039 (2011); *James E. Pierce, Jr.*, GSBCA 15201-RELO, 00-1 BCA ¶ 30,816. The fact that TQSA was authorized in his travel orders is irrelevant; it "cannot create an entitlement that does not exist in statute or regulation." *Baize*.

Decision

The Navy's motion for reconsideration is granted. Because our initial decision is this case was incorrect, it is vacated. The claim is denied. *See Damon Pfalmer*, CBCA 1314-RELO, 09-2 BCA ¶ 34,164.

STEPHEN M. DANIELS
Board Judge