



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 8, 2016

CBCA 4983-RELO

In the Matter of DAVID R. BIENVENUE

David R. Bienvenue, San Diego, CA, Claimant.

Jacqueline D. Thompson, Director, Human Resources Office, Department of the Navy, FPO Area Europe, appearing for Department of the Navy.

GOODMAN, Board Judge.

Claimant, David R. Bienvenue, is a civilian employee of the Department of the Navy. He has asked this Board to review the agency's denial of reimbursement of costs incurred incident to a permanent change of station (PCS).

Background

Claimant was issued travel orders for a PCS to return from his permanent duty station (PDS) in Rota, Spain, to his residence in San Diego, California. He was authorized thirty days of temporary quarters subsistence allowance (TQSA), from June 3 through July 3, 2015, prior to his departure, in accordance with the Joint Travel Regulations (JTR) and Department of State Standardized Regulations (DSSR).

Five years previously, on May 5, 2010, apparently when claimant began his duty in Rota, Spain, claimant signed a statement prepared by the agency which read in relevant part:

The DSSR provides that TQSA shall include meals and that reimbursement will be limited to actual expenses incurred, not to exceed the maximum authorized. Employees must submit to the [agency] a signed statement of actual expenditures including a certified statement indicating a per meal per day cost, and receipts or other appropriate documentation for the daily cost of

temporary quarters, laundry/dry cleaning, and for all meal expenses which exceed reasonable (average) cost. Employees are not required to submit receipts with their meal claims.^[1] However, employees are highly encouraged to maintain receipts for meals, for auditing purposes, until final payment is received. . . .

Please initial each of the following, sign and date below:

I fully understand that I must maintain a daily log of lodging, meals and laundry expenses. I am required to maintain and submit receipts for hotel lodging and laundry dry cleaning. I understand that I am not required to submit receipts for meals, however, I acknowledge the requirement to maintain receipts for meals, for auditing purposes, until final payment is received.

According to the agency, claimant received an email message with substantially the same information as the statement above, on May 22, 2015, before his TQSA began.² Claimant's TQSA period began June 3, 2015, and concluded July 2, 2015. Claimant states that on July 3, 2015, he submitted a certified statement of actual expenses to the agency for actual lodging, meals and incidental expenses for his TQSA in the amount of \$15,462.46. The maximum authorized allowance, as provided in his travel orders, was \$15,930. The agency reimbursed claimant \$10,420.85, and denied reimbursement of \$5041.61.³

¹ An earlier version of DSSR 125 required the employee to provide supporting receipts or other appropriate documentation for the daily cost of both "temporary lodging and laundry/dry cleaning," permitting a certified statement only for the daily cost of meals. The current version of DSSR 125, last updated August 30, 2009, changes the laundry and dry cleaning reimbursement requirement, providing for a certified statement in lieu of supporting receipts.

² The agency cannot locate the email message or prove that claimant received the message, because the agency states that the computer of the employee who sent the email message has "crashed." Claimant denies having received the email.

³ Claimant has submitted a copy of his certified statement which contains entries in both euros and dollars. The agency has submitted two lists indicating costs that were not reimbursed which also contain entries in euros and dollars.

Claimant states:

[The agency] eliminated any expenses which did not have a receipt, including minor expenses under \$75. Since the JTR and DSSR do not require receipts for every transaction, we did not maintain all receipts as later requested by [the agency]. [The agency] reconciliation which reduced my actual expenses reimbursement by \$5,041.61, through illegally eliminating all expenses that did not have a receipts [sic] or that did not provide the US-style details desired on the receipts issued in a foreign country (Spain). I am requesting full reimbursement of my actual TQSA expenses of \$15,462.46.

[The agency] violates [the applicable] JTR and DSSR regs by unrealistically requiring receipts for ALL expenses, including ALL minor expenses under \$75 from all family members. My daily actual expenses were determined by discussing the actual expenses incurred by each of my family members and recording the daily total on the worksheet. I turned in required receipts for lodging and whatever receipts my family was able to obtain and save during our PCS transition in a foreign country. [The agency] policy is not in compliance with JTR and DSSR regulations for TQSA reimbursement.

The agency filed a response, citing the relevant regulations and further stating that claimant had failed to follow agency policy which required submission of receipts in order to substantiate actual expenses:

It is the determination and at the direction of Commander Navy Region Europe, Africa, Southwest Asia (CNREURAFSWA) Regional Program Director. . . [that] actual expenses can only be determined by the collections of receipts. . . . The Region has a long standing policy and practice to require employees to submit receipts for their expenses This is not an internal nor local policy of [claimant's duty station in Spain], but rather the . . . long standing policy throughout CNREURAFSWA (i.e., Naples [Italy], Sigonella Sicily, Bahrain, Souda Bay Creek, Rota [Spain], Romania and Poland).

The agency's response also noted that it appeared from receipts submitted in some instances that claimant was not within reasonable proximity to his duty station during the TQSA period. This Board therefore requested that both claimant and the agency identify where claimant was located for each day of the TQSA period, and that the agency identify for each charge denied the basis for denial.

Claimant responded that he was with his family every day of the TQSA period. From June 3 through June 19, 2015, they lodged in a hotel near Rota, Spain. On June 19 they traveled by air to Santorini, Greece, via Italy and on June 26 returned to Spain, where they stayed again in a hotel near Rota, through July 3, 2015. He states:

I remained within the local proximity European countries and remained professionally available to provide telephone assistance necessary during this travel. As my location in Europe was close enough to provide any needed professional support, this is “in reasonable proximity” as per DSSR 125 requirement.

Discussion

“Congress has authorized agencies to pay a TQSA to employees in foreign areas who live in temporary quarters and are not provided Government owned or rented quarters without charge. The TQSA is to cover the reasonable cost of lodging, meals, and laundry expenses incurred by an employee and his or her family.” *Miriam E. Bolaffi*, CBCA 4029-RELO, 15-1 BCA ¶ 35,962, at 175,716; *Okyon Kim Ybarra*, GSBCA 15407-RELO, 01-1 BCA ¶ 31,334, at 154,762; *see* 5 U.S.C. § 5923(a)(1) (2012).

“The President has delegated to the Secretary of State authority to issue regulations which implement statutes providing for overseas pay differentials and allowances, including TQSA.” *Ybarra*, 01-1 BCA at 154,762; *see* Exec. Order No. 10,903, § 2, reprinted as amended in 5 U.S.C. § 5921 app. (2012). Those regulations are set forth in the Department of State DSSR, which “have the force and effect of law.” *Gordon D. Giffin*, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100, at 148,955.

DSSR 121(b) allows TQSA for a period not to exceed thirty days immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters. In this case, the agency denied claimant reimbursement of certain expenses incurred during his TQSA period because 1) he failed to submit receipts for meals, and 2) he was not within reasonable proximity to his duty station for a portion of the TQSA period.

Reimbursement for Meals Does Not Require Receipts

DSSR 125 states that “[e]vidence of the daily cost of meals, laundry, and dry cleaning shall be a certified statement by the employee.” There is no requirement that the employee submit receipts as evidence of actual costs for meals, laundry, and dry cleaning, despite the admonition of the agency that the employee should retain receipts for auditing purpose until final payment.

Claimant correctly asserts that the agency's policy of requiring receipts as proof of costs for meals, laundry and dry cleaning is contrary to DSSR 125. We addressed this issue in *Miriam E. Bolaffi*:

[T]he agency's demand that [the employee], and apparently other employees . . . be able to support *every* meal cost with a receipt directly conflicts with DSSR 125, which provides that "[e]vidence of the daily cost of meals . . . shall be a certified statement by the employee." It is true that the Department of Defense (DOD) has issued its own instruction, DOD Instruction 1400.25, Vol. 1250 (Feb. 23, 2012), providing that DOD officials are entitled to require receipts for meals "that they consider extravagant" . . . Yet, assuming the enforceability of that language in the DOD instruction, that language is limited to receipts for meal costs considered "extravagant." . . . It appears from the record that the [agency] instead routinely requires employees to submit receipts for all meal costs, *which finds no support in either the DSSR or the DOD instruction.*

15-1 BCA at 175,718-19 (Emphasis added).

As in *Bolaffi*, the agency's policy of requiring receipts as proof of actual costs for meals, laundry, and dry cleaning is contrary to DSSR 125, which only requires a certified statement of the employee of the costs incurred. Under well-settled principles, federal statutes and the regulations implementing them trump agency policies. *Charles A. Houser*, CBCA 2149-RELO, 11-1 BCA ¶ 34,769. Thus, "an agency cannot issue rules or regulations which run afoul of the express purpose stated by Congress or as implemented through regulation by the properly charged agency." 11-1 BCA at 171,112.

Claimant states that he kept a log of the actual costs of meals, laundry and dry cleaning. The cost of each meal varies, and the costs for laundry and dry cleaning vary and are intermittent throughout the TQSA period, as one would expect. The agency has identified no reason to question claimant's certified statement that the costs recorded are actual costs. Even though claimant does not have a receipt to support every meal, by recording the actual costs and certifying his statement, he has complied with the regulation, to the extent that the agency has not questioned any cost as extravagant or has other legitimate reasons to deny reimbursement.⁴

⁴ In *Bolaffi*, the employee submitted a certified statement requesting reimbursement for meals but did not submit receipts. We held that she was correctly denied reimbursement because she did not keep a log of her actual costs, but only submitted estimates in the same

Costs Must Be Incurred within Reasonable Proximity to the Post

DSSR 125 also requires that “[t]he location of the temporary quarters must be within reasonable proximity of the post.” This Board has recognized that neither statute nor the DSSR “draws a concentric circle around the site noted on the travel orders and provides that any lodging outside of a certain mile limit from center city is not allowable.” *Yong-Hee Andrean*, CBCA 2632-TRAV, 12-2 BCA ¶ 35,076, at 172,273 (reimbursement for TQSA was allowed when the employee commuted for an hour between two different cities in Germany). In *Annette M. Zapf*, CBCA 3788-RELO, 14-1 BCA ¶ 35,754, this Board found, “as a matter of generally accepted experience, that commutes in excess of an hour are hardly uncommon in metropolitan areas within the United States. Similarly, commutes in excess of an hour appear to have been typical for some . . . employees [at the foreign post at issue].” *Id.* at 174,960.

As illustrated by this Board’s previous decisions, a determination of “reasonable proximity of the post” must consider the employee’s ability to commute the distance between the place of TQSA to the duty station and back within a reasonable time. While claimant asserts that he “remained professionally available to provide telephone assistance” and his “location in Europe was close enough to provide any needed professional support,” claimant did not commute, nor could he have commuted, from Santorini to his post during that period—a distance of approximately 1760 air miles via airplane, or approximately a forty-five hour journey via automobile in addition to a boat trip between Santorini and the mainland of Greece. We, therefore, find that claimant was not in reasonable proximity to his post during his travel to and from and stay in Santorini, Greece, from June 19 to June 26, 2015. Claimant’s interpretation—that phone availability complied with the regulation—would place an employee in reasonable proximity to his post anywhere there was phone service. This is clearly not the intent of the regulation, which pertains to reasonable commuting distance from a physical location.

Decision

This case is returned to the agency for reconsideration and recalculation based on our findings herein. Lack of receipts is not a sufficient reason to deny reimbursement for meals, laundry, and dry cleaning as claimant has complied with the DSSR by keeping a certified log of actual expenses. This does not prevent the agency from denying reimbursement for other

amount for most meals. Her estimates were not reliable evidence of actual costs, as there was no evidence that they were made contemporaneously when the meals occurred.

reasons previously asserted, such as non-reimbursement for alcohol, inability to identify an expense item, or similar reasons. Claimant is not entitled to reimbursement of expenses incurred during his travel to and from and stay in Santorini, Greece, as he was not within reasonable proximity of his post on those days.

ALLAN H. GOODMAN
Board Judge