UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 6, 2016

CBCA 5288-RELO

In the Matter of DONALD G. LESSNER, JR.

Donald G. Lessner, Jr., Arlington, VA, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

SHERIDAN, Board Judge.

Claimant, Donald G. Lessner, Jr., is a supervisory special agent with the Department of Justice, Drug Enforcement Agency (DEA) who was issued permanent change of station (PCS) orders. Claimant seeks additional temporary quarters subsistence expenses (TQSE) associated with his PCS move. Specifically, claimant challenges the DEA's disallowance of certain meal expenses not incurred in proximity to his old or new duty station and its calculation of separate maximum allowable amounts for his old and new duty stations.

We conclude that under the governing provisions of the Federal Travel Regulation (FTR), claimant and his family are entitled to all meals and incidental expenses (M&IE), no matter where incurred, while occupying temporary lodging at his old or new duty station. We further hold that claimant and his family do not need to calculate separate maximum allowable amounts for the lodging and M&IE at the two locations (the old and new duty stations). Rather, they may accumulate a single maximum allowable amount for lodging in each thirty-day period and a single maximum allowable amount for M&IE in each period and then use those amounts as a basis for reimbursement.

Background

The DEA issued claimant PCS travel orders effective May 6, 2016, for his transfer from the DEA Detroit Division in Detroit, Michigan, to DEA Headquarters in Arlington, Virginia. Claimant's travel orders contained a reporting date of June 28, 2015, and authorized a TQSE allowance under the actual expense method, with an eligibility period of thirty days.

At the time of his transfer, claimant's family consisted of himself, his wife, four children age twelve or older, and one child under the age of twelve. On June 15, 2015, claimant, his wife, and their four youngest children entered temporary quarters in Ann Arbor, Michigan. That same day, claimant's eldest daughter entered into temporary quarters in Arlington, Virginia, near claimant's new duty station. On June 26, 2015, claimant joined his eldest daughter in Virginia, while the rest of his family continued to occupy temporary quarters in Michigan.[1] On July 15, 2015, the DEA authorized an extension of an additional twenty days of TQSE allowance, yielding a new eligibility period of fifty days.

On July 27, 2015, the remainder of claimant's family left temporary quarters in Michigan and traveled to Arlington. That same day, they entered temporary quarters in Arlington, joining claimant and his eldest daughter. The family continued to occupy temporary quarters until July 29, 2015, and entered permanent quarters on July 30, 2015.

Claimant submitted two vouchers for reimbursement. The first voucher, covering the first thirty days in temporary quarters, claimed $19,593.21 of expenses. The second voucher covered the final fifteen days in temporary quarters and claimed $8117.41 of expenses. After disallowing certain amounts, the DEA approved payment of $15,181.88 for the first voucher and $6229.35 for the second.The DEA provided two reasons for the amounts it disallowed. First, the DEA disallowed $703.75 of meal expenses from the first voucher and $300.82 of meal expenses from the second voucher (totaling $1004.57) because those expenses were not incurred within a reasonable proximity of Ann Arbor or Arlington.[2] Second, the DEA

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[1] Claimant asserts, "[A]t no time did I leave TQ or checkout of my MI or VA hotels," whereas the material provided by the agency suggests that claimant was not in temporary quarters on June 25, 2015. This issue is not material to the resolution of this claim because no expenses were disallowed for that date and the reduction of claimant's maximum allowable amount would not be sufficient to affect his reimbursement.

[2] The DEA disallowed an additional $10 from the second voucher, representing the expense of reloading money on a coffee shop card. Claimant does not contest this disallowance.

disallowed $3707.58 from the first voucher and $1577.24 from the second voucher (totaling $5294.82), representing the extent to which the expenses incurred in Arlington, Virginia, exceeded the maximum allowable amounts that DEA calculated for that location.

After receiving his audited vouchers, claimant sought reconsideration from the DEA. The Travel Allowance Unit (FNOP) determined that it could not grant claimant any additional relief and referred him to Financial Policies and Controls Unit (FNIP). After receiving claimant's request, the FNIP denied reconsideration on the basis that the disallowances were proper in light of the DEA's view of the underlying regulations.

With regard to the $5294.82 that was disallowed as exceeding claimant's maximum allowable amounts, the FNIP explained that "[temporary quarters] allowances are calculated using the 'rest of the United States' per diem rates . . . . These rates are discounted for spouses and children, and actual expenses are reimbursed up to the allowable amount. The calculation of actual vs. spent is done for each [temporary quarters] location." Thus, although the expenses incurred in Michigan fell well below the maximum allowable amounts that the DEA calculated for that location, the agency concluded that claimant could not use the Michigan-related allowance to offset his excess expenses in Virginia.

As for the $1004.57 worth of meal expenses that were disallowed because they were not incurred within reasonable proximity of Ann Arbor or Arlington, the FNIP explained that the FTR allows reimbursement of TQSE only when the employee or the employee's immediate family "occupy temporary quarters . . . within reasonable proximity of [the] old and/or new official stations . . . unless justified by special circumstances that are reasonably related to [the] transfer." 41 CFR 302-6.9 (2015) (FTR 302-6.9). The FNIP elaborated that the DEA interprets "reasonable proximity" as "approximately 50 miles from the old and/or new duty stations." The FNIP noted that while the agency had paid some expenses incurred outside the fifty-mile radii, "we do not interpret these regulations to include distances of 100 miles or more." After FNIP denied reconsideration, claimant brought this claim before the Board.

Discussion

This claim presents two issues: 1) whether the DEA acted properly when it disallowed TQSE expenses as exceeding the maximum allowable amount, where the agency calculated separate "maximum allowable amounts" for the employee and those members of his immediate family who were living separately from him, and 2) whether the DEA acted properly when it disallowed M&IE incurred outside reasonable proximity of his old and/or new duty stations.

A. Maximum Allowable Amount

Claimant argues that the FTR and DEA PCS materials do not clearly state that the maximum allowable amount is calculated separately for the old and new duty stations. He also maintains that he should have been advised prior to his PCS on the limits of the TQSE he has encountered. Claimant posits that:

> DEA stated that the "maximum allowable amount is the maximum daily amount multiplied by the number of days you actually incur TQSE." DEA then argued that I exceeded the maximum allowable amount, and therefore was not reimbursed significant portions of expenses. However[,] I am not disputing how the maximum allowable amount is calculated; **only that the amount "should be calculated then separated; an amount for Old Post of Duty and another amount for New Post of Duty."**

Claimant posits that he should be able to accumulate his, his spouse's, and his children's TQSE maximum allowable amounts as a single, collective maximum allowable amount and that the DEA should reimburse him for any allowable expenses that his family incurred up to that amount. Put another way, claimant argues that the TQSE maximum allowable amount should be accumulated first, and then that amount should cover all lodging and M&IE as actually incurred. By that process, claimant would be able to offset the higher cost of lodging and M&IE in Arlington against the lower cost of these items in the Ann Arbor area.

"The TQSE allowance is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters." FTR 302-6.3. By statute, 5 U.S.C. § 5724a(c) (2012), federal agencies are authorized to reimburse employees for their subsistence expenses incurred while they or their families are occupying temporary quarters pursuant to a transfer in the interest of the Government for a period of up to sixty days, and may reimburse such expenses for up to an additional sixty days if the designated agency official determines there are compelling reasons for the continued occupancy of temporary quarters. An employee and his or her immediate family may occupy temporary quarters at different locations, FTR 302-6.10, so long as the family members are within reasonable proximity of the employee's old or new duty station, FTR 302-6.9.

For temporary quarters located in the continental United States (CONUS), the applicable per diem rate used to calculate an actual expense TQSE allowance is the standard CONUS rate set by the General Services Administration. FTR 302-6.102. The standard CONUS rate during the period of claimant's transfer (June-July 2015) was $83 per day

allotted to lodging and $46 per day allotted to M&IE. FTR ch. 301 app. A, Per Diem Files (Archived), http://www.gsa.gov/portal/content/103168.

FTR 302-6.100 sets forth what an employee is entitled to be paid under the actual expense method of TQSE reimbursement and provides:

> Your agency will pay your actual TQSE incurred, provided the expenses are reasonable and do not exceed the maximum allowable amount. The "maximum allowable amount" is the "maximum daily amount" multiplied by the number of days you actually incur TQSE not to exceed the number of days authorized, taking into account that the rates change after 30 days in temporary quarters. The "maximum daily amount" is determined by adding the rates in the following table for you and each member of your immediate family authorized to occupy temporary quarters:

	The "maximum daily amount" of TQSE under the actual expense method that		
	[The employee] and/or [the employee's] unaccompanied spouse or domestic partner[1] may receive is	[The employee's] accompanied spouse, domestic partner or member of [the employee's] immediate family who is age 12 or older may receive is	A member of [the employee's] immediate family who is under age of 12 may receive is
For: The first 30 days of temporary quarters.	The applicable per diem rate. [lodging: $83 per day M&IE: $46 per day]	.75 times the applicable per diem rate. [lodging: $62.25 per day M&IE: $34.50 per day]	.5 times the applicable per diem rate. [lodging: $41.50 per day M&IE: $23 per day]
Any additional days of temporary quarters.	.75 times the applicable per diem rate. [lodging: $62.25 per day M&IE: $34.50 per day]	.5 times the applicable per diem rate. [lodging: $41.50 per day M&IE: $23 per day]]	.4 times the applicable per diem rate. [lodging: $33.20 per day M&IE: $18.40 per day]

[1] (That is, when the spouse or domestic partner necessarily occupies temporary quarters in lieu of the employee or in a location separate from the employee).

As noted above, the FTR provides that an employee receiving TQSE reimbursement under the actual expense method will be paid for his or her actual expenses, so long as those expenses do not exceed the maximum allowable amount. FTR 302-6.100. The maximum allowable amount is the aggregate of the maximum daily amounts for each day that the employee incurs TQSE. *Id.* TQSE is reimbursed in thirty-day increments, with a separate maximum allowable amount for each period. *See* FTR 302-6.104.

The maximum daily amount for a given day is determined by adding together the relevant rates "for [the employee] and each member of [the employee's] immediate family authorized to occupy temporary quarters." FTR 302-6.100. The rate for each family member, which is also called the "maximum daily amount," is determined from the table included in FTR 302-6.100. The relevant rates change after thirty days in temporary quarters. *Id.*

Under the table at FTR 302-6.100, the maximum daily amount an employee or family member receives is a specified fraction of "the applicable per diem rate." The applicable per diem rate for temporary quarters located in CONUS is the standard CONUS rate. FTR 302-6.102.

As opposed to a lump sum TQSE allowance, under the actual expense method the rate for lodging cannot be combined with the rate for M&IE to produce a single lump sum daily rate. *Cf.* FTR 302-6.201 (requiring that the per diem rate used to calculate a lump sum TQSE allowance is "lodging plus meals and incidental expenses"). Thus, under the actual expense method the daily lodging allotment for claimant is added together with the lodging allotments of each of the other family members, to reach a total that can be used to pay the daily lodging expenses of the family as a whole, provided the costs were actually incurred.

During the eleven-day period from June 15 to June 25, 2015, while claimant and his spouse occupied temporary quarters together in Michigan, the maximum daily amount for lodging was $435.75, which represents $83 for claimant, $62.25 for claimant's spouse and for each of their four children age twelve or older, and $41.50 for their youngest child. The maximum daily amount for M&IE was $241.50, which represents $46 for claimant, $34.50 for claimant's spouse and for each of their four children age twelve or older, and $23 for their youngest child.

On June 26, 2015, when claimant moved into temporary quarters separate from his wife, her daily rate increased to $83 for lodging and $46 for M&IE. As a result, the maximum daily amounts for the family increased to $456.50 for lodging and $253 for M&IE for the nineteen days remaining in the first thirty days they occupied temporary quarters.

Aggregating the maximum daily amounts for each of the first thirty days, claimant's maximum allowable amounts for the period total $13,466.75 for lodging expenses and $7463.50 for M&IE.[3] For this time period, claimant claimed $12,322.86 in lodging expenses

[3] These sums assume that claimant and all members of his family were entitled to receive the full amount for each day of the period, provided they actually incurred

and $7270.35 in M&IE ($703.75 of which was disallowed because it was not incurred within reasonable proximity to Arlington or Ann Arbor). Both of these amounts are below their respective maximum allowable amounts.

In the second thirty-day period, claimant and his family occupied temporary quarters for fifteen days from July 15 to July 29, 2015, with the daily rates changed to those applicable after the first thirty days.

For the twelve days from July 15 to July 26, 2015, during which claimant and his wife occupied separate temporary quarters, the maximum daily amount was $323.70 for lodging and $179.40 for M&IE. For the three days from July 27 to July 29, 2015, during which the entire family was together, the daily rate for claimant's wife was reduced to $41.50 for lodging and $23 for M&IE. This resulted in total maximum daily amounts of $302.95 for lodging and $167.90 for M&IE.

Aggregating these maximum daily amounts yields maximum allowable amounts for the final fifteen days of temporary quarters (July 15 to July 29, 2015) of $4793.25 for lodging and $2656.50 for M&IE. For this period, claimant claimed $5443.98 for lodging and $2673.43 for M&IE ($300.82 of which was disallowed based on lack of proximity and another $10 of which was disallowed as an unallowable expense). Claimant's lodging expenses for this period exceed the maximum allowable amount by $650.73. His claimed M&IE, excluding the uncontested $10 disallowance, exceeds the maximum allowable amount by $6.93.

Therefore, claimant is entitled to reimbursement for the full extent of his allowable expenses during the first thirty-day period, representing $12,322.86 in lodging expenses and $7270.35 in M&IE,[4] and for the full $4793.25 lodging allowance for the final fifteen days in temporary quarters. Claimant is also entitled to M&IE for the final fifteen-day period to the extent that those expenses are allowable and do not exceed the $2656.50 allowance.

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expenses in that amount. If, as the DEA materials suggest, claimant did not occupy temporary quarters on June 25, 2015, the maximum daily amount for that day would be $373.50 for lodging and $207 for M&IE, yielding maximum allowable amounts for the first thirty-day period of $13,404.50 for lodging and $7429 for M&IE.

[4] As discussed *infra* Part B, the agency's disallowance of $703.75 in M&IE, as not incurred within a reasonable proximity of the old or new duty station, was incorrect.

B. Reasonable Proximity

Claimant also appeals DEA's denial of $1004.57 of M&IE expenses on the basis that the expenses were not incurred within a reasonable proximity of the old or new duty station. Claimant characterizes these expenses as "meals consumed and/or food purchases," and the agency has not contested this characterization.

The DEA's disallowance of the expenses was based on its interpretation of FTR 302-6.9, which provides:

> You and/or your immediate family may occupy temporary quarters at Government expense within reasonable proximity of your old and/or new official stations. Neither you nor your immediate family may be reimbursed for occupying temporary quarters at any other location, unless justified by special circumstances that are reasonably related to your transfer.

FTR 302-6.9. The FTR defines "temporary quarters" as "*lodging* obtained for the purpose of temporary occupancy from a private or commercial source." FTR 302-6.1 (emphasis added). Therefore, an employee or employee's family meets the "reasonable proximity" requirement so long as he, she, or they occupy lodgings that are within a reasonable proximity of the old or new duty station.

In *Keith Hill*, CBCA 5029-RELO, 16-1 BCA ¶ 36,295, the Board addressed language in the Department of State Standardized Regulations (DSSR) which is substantially similar to that in FTR 302-6.9. The Board held that the requirement in DSSR section 125 that "the temporary quarters must be within reasonable proximity of the post" applied to the location of the employee's lodgings. *Hill*, 16-1 BCA at 176,995. "The provision does not limit, however, the places where the employee and his family members may consume meals whose costs are reimbursable, as long as the employee continues to reside within reasonable proximity of the post." *Id.* Applying this reasoning to FTR 302-6.9, an employee and his or her family members may be reimbursed for M&IE outside the reasonable proximity of the old or new duty station, so long as their lodgings are within a reasonable proximity of the old or new duty station.

The DEA's reliance on *Ronald C. Williamson*, CBCA 728-RELO, 07-2 BCA ¶ 33,664, is misplaced because that case involved an employee who occupied temporary lodgings while on a personal trip. In *Williamson*, an employee who was transferred from Salt Lake City, Utah, to Anchorage, Alaska, went to Colorado to spend Christmas with his son. The employee then sought lodging and meal expenses for his stay in Colorado. *Id*. at 166,693 ("The largest [disallowed] sum claimed by the claimant is the amount he was denied

for lodging and meal costs which were incurred while he visited family in Colorado over the 2006 Christmas holiday."). The claim for those expenses was denied because "[t]he language of the regulation permits reimbursement only where *the temporary quarters* is in reasonable proximity to the new or old duty station." *Id.* (emphasis added). The decision does not address the situation where, as here, the temporary quarters are within a reasonable proximity to the new or old duty station but M&IE are incurred farther away.

Christine G. Davis, B-254837 (May 27, 1994), also relied upon by the DEA, is inapplicable. In *Davis*, the employee on TQSE checked out of her temporary quarters near her new duty station to take a trip to Springfield, Missouri, so that her son could spend his birthday with family. During the trip, the employee incurred hotel expenses, demonstrating that she occupied temporary quarters away from her old and new duty stations. The Comptroller General concluded that, because the trip was conducted for personal reasons unrelated to the transfer, the meal and lodging expenses associated with the trip were not reimbursable.[5] The opinion did not address the situation presented here where claimant and/or his family occupied temporary quarters within a reasonable proximity of the old and/or new duty station, but incurred M&IE outside the reasonable proximity of the old and/or new duty station.

The reasonable proximity rule set forth in FTR 302-6.9 only applies to lodgings. Here, claimant and his family occupied lodgings that were within a reasonable proximity of his old and/or new duty station. As there is no requirement that their M&IE be incurred within a reasonable proximity of claimant's old and/or new duty station, the M&IE expenses are allowable to the extent that those expenses do not exceed the maximum allowable amount for the period in which they were incurred.[6]

C. Conclusion

Based on the above discussion, we conclude that, of the $6299.39 disallowed by the DEA, $667.66 was properly disallowed. This sum represents $650.73 that exceeded the maximum allowable amount for lodging during the final fifteen-day period, $6.93 that exceeded the maximum allowable amount for M&IE during that period, and the $10

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[5] TQSE is not payable while an employee is on vacation. *See James E. Roberts*, GSBCA 15592-RELO, 01-2 BCA ¶ 31,567; *Robert E. Jacob*, GSBCA 13792-RELO, 97-2 BCA ¶ 29,218.

[6] To the extent that the DEA has disallowed M&IE for the day on which the family was "en route" from Michigan to Virginia, this disallowance is incorrect unless these expenses were reimbursed under the en route per diem authorized in claimant's travel orders.

unallowable charge. The remaining $5631.73, less any expenses already reimbursed claimant under the en route per diem authorized in claimant's travel orders, represents reimbursable expenses improperly disallowed by the DEA.

Decision

The claim is granted in part. DEA shall reimburse claimant $5631.73, reduced by any expenses that it may have already reimbursed claimant under the en route per diem authorized in claimant's travel orders.

PATRICIA J. SHERIDAN
Board Judge