UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 28, 2017

CBCA 5732-RELO

In the Matter of SCOTT A. LARSEN

Scott A. Larsen, APO Area Europe, Claimant.

Yanir M. Hill, Assistant Deputy Chief of Staff, and Ilona M. Keller, Human Resources Specialist, Civilian Personnel Directorate, Department of the Army, APO Area Europe, appearing for Department of the Army.

LESTER, Board Judge.

Claimant, Scott A. Larsen, submitted to the Department of the Army (Army) a request for reimbursement of travel costs associated with a permanent change of station (PCS) from a duty station in the continental United States (CONUS) to one outside the continental United States (OCONUS). In response, the office dealing with reimbursement of the CONUS portion of his travel told him that some claimed lodging and meals costs incurred in the United States should be covered by a temporary quarters subsistence allowance (TQSA) for which his OCONUS duty station was responsible. The OCONUS duty station then informed him that, because TQSA only applies to costs incurred after the employee's arrival OCONUS, the CONUS duty station must have meant that Mr. Larsen should claim the costs as pre-departure subsistence expenses, which is a component of the foreign transfer allowance (FTA). After Mr. Larsen requested FTA, the OCONUS duty station denied his claim.

Mr. Larsen is seeking to be paid his travel costs. He has challenged the Army's recent denial of his FTA claim, after the agency told him to categorize his costs as FTA, but he originally sought reimbursement of those costs as PCS travel costs. We agree with the Army that, because all of the costs that Mr. Larsen seeks were incurred after he had made his final

departure from the CONUS duty station from which he was transferring, FTA does not cover them. Nevertheless, the costs are reimbursable as PCS travel costs, and we direct the agency to calculate the appropriate per diem amount due Mr. Larsen as an expense of official travel.

Background

Mr. Larsen received orders for a PCS from his original permanent duty station (PDS) at Fort Huachuca, Arizona, to a new OCONUS PDS at Hohenfels, Germany. The PCS orders authorized Mr. Larsen to use multiple modes of transportation for his travel between the old and new duty stations – government carrier, commercial carrier, personally owned conveyance, rail, and/or air – and authorized per diem during travel for Mr. Larsen and his wife. The order also authorized shipment of Mr. Larsen's personally owned vehicle (POV) from Fort Huachuca to Hohenfels. The vehicle processing center (VPC) closest to Fort Huachuca, through which the Army would ship the POV, was in San Diego, California.

The Army's transportation office scheduled Mr. Larsen and his wife to depart for Germany from Baltimore, Maryland, on the "Patriot Express," a government-chartered flight, on Wednesday, February 22, 2017. After some modifications to his original travel orders, he and his wife were authorized to fly to Baltimore from San Diego, rather than from the airport nearest Fort Huachuca, so that they could deliver Mr. Larsen's POV to the San Diego VPC prior to their cross-country flight. Because the VPC is closed on weekends, would be closed because of a federal holiday on Monday, February 20, 2017, and would not open in time on Tuesday, February 21, to allow Mr. Larsen and his wife to catch a flight (after delivering the POV) that could connect to the government-chartered February 22 flight, Mr. Larsen was informed that he would need to deliver his POV to the VPC on Friday, February 17, 2017.

Mr. Larsen and his wife vacated their residence near Fort Huachuca on February 16, 2017, and departed in their POV for San Diego. They did not incur any temporary lodging costs before departing the Fort Huachuca area. They arrived in San Diego later that day, delivered their POV to the VPC on February 17, and stayed in a local San Diego hotel until their scheduled flight to Baltimore on February 21, 2017.

Mr. Larsen subsequently submitted a travel voucher to the Defense Finance and Accounting Service (DFAS) office in Rome, New York, seeking reimbursement for, among other things, the costs of lodging and meals and incidental expenses (M&IE) while in San Diego. DFAS authorized reimbursement of some claimed costs, including flight costs from San Diego to Baltimore, per diem for February 21 and February 22, baggage fees, and transport costs from a hotel to the airport. Nevertheless, a DFAS customer care center representative informed Mr. Larsen by email message on April 25, 2017, that, "[f]or the hotel

in San Diego, you are authorized TQSA so to have that reimbursed [it] would have to be approved through your OCONUS [human resources] office." Because TQSA is a subsistence allowance covering costs of temporary quarters that the employee incurs after arriving at the new OCONUS post of assignment, *see Annette M. Zapf*, CBCA 4231-RELO, 15-1 BCA ¶ 35,932, at 175,612 (citing 5 U.S.C. § 5923(a)(1)(A) (2012)), the parties here agree that DFAS most likely meant to refer to entitlement to FTA, rather than TQSA.

On April 28, 2017, the civilian personnel office within the United States Army, Europe, informed Mr. Larsen that it had received and reviewed his claim for FTA pre-departure subsistence expenses incurred from February 16 to 21, 2017. It denied the request, indicating that the expenses did not satisfy the FTA requirements.

Mr. Larsen subsequently submitted his claim to the Board for review, asking us to grant him $1074.41 for lodging and M&IE incurred from February 16 to 21, 2017, while he and his wife were in San Diego delivering their POV to the VPC and awaiting their flight to Baltimore.

Discussion

I. The FTA Claim

By statute, "agencies may grant as a cost of living allowance a transfer allowance for extraordinary, necessary, and reasonable subsistence and other relocation expenses, not otherwise compensated for, incurred by an employee incident to establishing himself at a post of assignment in a foreign area." *Michael A. MacInerney*, GSBCA 16309-RELO, 04-1 BCA ¶ 32,613, at 161,402 (citing 5 U.S.C. § 5924(2)(A) (2000)). The Department of State Standardized Regulations (DSSR), which are promulgated by the Secretary of State and have the force and effect of law, *Gordon D. Giffin*, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100, at 148,955, implement that statutory requirement through the FTA, which consists of four separate components: (1) a lump sum miscellaneous expense portion, (2) a lump sum wardrobe expense portion, (3) a pre-departure subsistence expense portion, and (4) a lease penalty expense portion. DSSR 241.2. The Federal Travel Regulation (FTR) applies that DSSR provision to federal civilian employees transferring through a PCS from a domestic duty station to an OCONUS duty station. 41 CFR 302-3.101 (2016) (FTR 302-3.101).

Mr. Larsen's claim involves pre-departure subsistence expenses, the third component of the FTA. The DSSR defines that component as covering "lodging, meals (including tips), laundry, cleaning and pressing expenses in temporary quarters for [the] employee and each member of [his or her] family for up to 10 days before final departure from a post in the United States to a post in a foreign area, beginning not more than 30 days after they have

vacated residence quarters." DSSR 241.2(c). Entitlement to the FTA's pre-departure subsistence expense begins when an employee who is being transferred from a domestic duty station to an OCONUS station "has abandoned his [or her] residence [at his domestic duty station] or the [domestic station] residence is no longer fit for permanent occupancy." *Stuart L. Sumner*, CBCA 1097-RELO, 08-2 BCA ¶ 33,897, at 167,769. So long as the employee timely commences that ten-day FTA period within thirty days after vacating his or her domestic duty station residence, "[t]he ten days may be [spent] anywhere in the U.S. (calculated using the per diem rate of the U.S. Post of assignment) *as long as [the] employee or family members have not begun travel on orders and final departure is from the U.S. post of assignment*." DSSR 242.3(c) (emphasis added).

The DSSR creates a hard-and-fast rule regarding the conclusion of the FTA entitlement period. As we explained in *Patrick S. Horan*, CBCA 5424-RELO, 16-1 BCA ¶ 36,515, "once the employee and his family make their 'final departure' from the employee's U.S. post of assignment to begin their travel to the new foreign duty post, the period for an FTA comes to an end." *Id.* at 177,892. We explained our interpretation of that rule as follows:

> The agency is correct in asserting that, under the DSSR, any FTA expenses have to be incurred before the employee or family members have "begun travel on orders" and before "final departure" of the employee or his family "from the U.S. post of assignment," DSSR 242.3(c) . . . . "[T]he regulations governing the FTA are unforgiving," and "they do not allow granting the allowance to anyone, no matter the circumstances, for any days after an employee begins travel on orders." *MarieLouise R. Assing*, CBCA 4921-RELO, 15-1 BCA ¶ 36,173, at 176,509. Accordingly, "[a]n employee may be reimbursed for expenses of pre-departure [FTA] only if the [FTA] occurred prior to departing his/her old duty station." *Jessica M. Koldoff*, CBCA 2656-RELO, 12-2 BCA ¶ 35,151, at 172,528.

Id.; *see Lee Ethel Edwards*, CBCA 5446-RELO, 17-1 BCA ¶ 36,643, at 178,460 (FTA entitlement comes to an end when the employee makes his or her final departure from the U.S. post of assignment); *Karl W. Geyer*, CBCA 3509-TRAV, slip op. at 3 (Dec. 19, 2013) (for purposes of the FTA, "final departure" and the beginning of travel on orders occurred when the employee left the employee's duty station in Dayton, Ohio, in a rental car to drive to an airport in New York City); *Warren Shapiro*, B-208590 (Nov. 24, 1982) ("under the regulatory interpretation of the statute, the allowance only covers expenses incurred prior to the employee's departure from the old duty station").

Accordingly, in considering any FTA request, "[t]he dispositive issue . . . is identifying when [the claimant] made his [or her] 'final departure' from his [or her] 'U.S. post of assignment.'" *Patrick S. Horan*, 16-1 BCA at 177,892. Here, Mr. Larsen's "U.S. post of assignment" was Fort Huachuca, Arizona. He made his "final departure" from that post on February 16, 2017, when he and his wife left Fort Huachuca to drive to San Diego. Mr. Larsen's FTA entitlement ended at that time. Mr. Larsen has represented that he incurred no costs for temporary lodging before departing Fort Huachuca. He cannot recover FTA for the time that he spent in San Diego after he had already made his final departure from Fort Huachuca. The Army properly denied Mr. Larsen's request insofar as it might be deemed to be for FTA.

To the extent that individuals within the Army informed him that he could receive FTA if he departed from San Diego after delivering his POV at the VPC, such advice, even if relied upon in good faith, "would not create a reimbursement entitlement because '[t]he Government may not authorize the payment of money in violation of statute or regulation.'" *Patrick S. Horan*, 16-1 BCA at 177,893 (quoting *Gregory J. Bird*, GSBCA 16110-RELO, 04-1 BCA ¶ 32,425, at 160,480 (2003)). We have no authority to revise the DSSR provision defining when FTA entitlement concludes. *See Tyler F. Horner*, CBCA 4468-RELO, 15-1 BCA ¶ 35,899, at 175,504 ("The Board and claimant are not free to rewrite the [FTA] policy and requirements expressed in the regulations.").

II. Recovery of Travel Costs

When Mr. Larsen submitted to the agency his request for reimbursement of lodging costs and M&IE for his time in San Diego, he did not specifically request FTA. He instead included his lodging and M&IE reimbursement requests in his travel voucher, treating them as costs of his travel from Fort Huachuca to Germany. DFAS denied his request for travel costs from February 16 to 21, 2017, stating that he must seek to recover those costs as TQSA (or, as corrected, FTA) from his new OCONUS duty station agency. Although we agree with the Army that these costs are not properly considered FTA (or TQSA), we can see no valid reason for DFAS's denial of Mr. Larsen's original travel cost claim.

An employee is normally expected to take the usually traveled route, or another route authorized by the agency as officially necessary, from the old PDS to a new PDS. *Robert F. Teclaw*, CBCA 1572-TRAV, 09-2 BCA ¶ 34,166, at 168,904. Nevertheless, if the employee, as part of his or her transfer, is authorized shipment of a POV to an OCONUS duty station,

he or she must get the POV to a VPC, Joint Travel Regulation (JTR) 5276,[1] of which there are apparently only eleven in the continental United States. "Statute provides for the shipment at government expense of an employee's POV when that employee transfers 'to, from, and between the continental United States and a post of duty outside the continental United States.'" *Patrick L. Keller*, CBCA 5151-RELO, 16-1 BCA ¶ 36,384, at 177,360 (quoting 5 U.S.C. § 5727(b) (2012)). FTR 302-9.104 implements that statutory provision, stating that, "[i]f there is no port or terminal at the point of origin and/or destination, [the employee's] agency will pay the entire cost of transporting the POV from [the employee's] point of origin [or duty station] to [the employee's] destination." 41 CFR 302-9.104. In addition, the FTR provides that the employee may "choose to drive [his or her] POV from [his or her] point of origin at time of assignment to the nearest embarkation port or terminal" – that is, the VPC – and "be reimbursed [the] one-way mileage cost." *Id.* It also provides for employee reimbursement for one-way travel from the "embarkation port or terminal" back to the duty station. *Id.*

The JTR supplements the FTR provision and identifies three ways (inclusive of the transportation method identified above) that the employee can transport the POV to the VPC:

> *First*, the employee can pay another individual to drive the POV to the VPC or can arrange to have the POV transported commercially, and the employee can be authorized reimbursement for that cost. JTR 5726-A.1.
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> *Second*, before beginning permanent duty travel, the employee can drive the POV to the VPC himself or herself, and the employee can then return to his or her permanent duty station or actual residence before, at a later date, beginning permanent duty travel to the new OCONUS duty station. The employee can be reimbursed for the actual one-way transportation cost that he or she incurs in returning from the VPC location to his or her permanent duty station or actual residence (subject to a cost ceiling that is described in the regulation), but cannot receive a M&IE or lodging per diem for that travel, separate and apart from PCS travel. JTR 5726-B (citing FTR 302-9.104).
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> *Third*, the employee can deliver the POV to the VPC as a part of, and incident to, his or her PCS travel. JTR 5726-C. In that situation, the employee may be authorized a driving reimbursement (at the applicable rates identified in the

[1] All references to the JTR in this decision relate to the JTR in effect in February 2017, when Mr. Larsen traveled.

regulation) from his or her old PDS or actual residence to the VPC, plus transportation cost reimbursement.

If an employee takes the second option, making a trip separate and apart from his PCS travel to deliver his POV to a VPC and to return to the original PDS, he is not entitled to any per diem for that trip. FTR 302-9.104; JTR 5726-B; *see Mark E. Bradley*, CBCA 4759-TRAV, 15-1 BCA ¶ 36,088, at 176,193 (no per diem for separate trip to the VPC); *Louis DeBeer*, B-193837 (July 17, 1979) (same). That limitation does not apply if the employee's travel orders authorize him (as permitted by JTR 5726-C) to take his or her POV to the VPC as a part of, and incident to, PCS travel and then to fly to his or her new OCONUS PDS from the city in which the VPC sits. "Per diem includes lodging and other expenses incurred by an employee *while on official travel*." *Patrick L. Keller*, 16-1 BCA at 177,360 (emphasis added) (citing FTR 301-11.1, -11.5 (2015)).

In *Warren Shapiro*, B-208590 (Nov. 24, 1982), the Comptroller General considered a situation in which an employee had received PCS orders to travel from his old duty station in St. Louis, Missouri, to a new duty station in Korea. As part of his orders, he was authorized to travel in his POV to Oakland, California, from which point his POV was to be shipped to Korea. His travel orders authorized per diem on a constructive travel time basis, allowing one day's per diem for each 300 miles of official distance traveled, and he was paid per diem for seven-and-a-half days on this basis. The employee departed St. Louis in his POV on September 11, arrived in Oakland on September 15 – three days before he was to deliver his POV to the VPC (on September 18) and five days before his actual departure for Korea (on September 20). The Comptroller General denied the employee's request for an additional two-and-a-half days of per diem beyond the seven-and-a-half already granted, stating that it knew "of no regulatory provision which authorizes per diem for early arrival or delay at the port of embarkation caused by the delivery of an automobile for shipment." Nevertheless, the Comptroller General did not question the ability of the agency to grant per diem for the necessary portion of the PCS travel spent driving to the VPC location, en route to the new OCONUS PDS.

The record here indicates that Mr. Larsen departed for San Diego on February 16 only because he was informed that he had to deliver his POV at the VPC no later than February 17 if he was to make the February 22 government-chartered flight from Baltimore to Germany that the Army had scheduled. He had no ability to reschedule or postpone that government-chartered flight, meaning that he could not delay or postpone his POV deposit at the VPC. Mr. Larsen's PCS travel orders authorized travel by means of POV (along with several other modes of travel), and it authorized him to depart by air from San Diego, the city in which the VPC sits. Once Mr. Larsen departed his PDS in Fort Huachuca, he had begun his travel to his new OCONUS duty station. By delivering his POV to the VPC during PCS

travel, he saved the Government the reimbursable costs for one-way return air travel from San Diego to the Fort Huachuca area that he would have incurred had he made a separate trip. In such circumstances, the agency had no basis for denying Mr. Larsen's travel costs, including per diem, from February 16 to 21, 2017.

Decision

For the foregoing reasons, Mr. Larsen's claim, insofar as it asks for FTA, is denied, but Mr. Larsen is entitled to recover his costs of lodging and M&IE from February 16 to 21, 2017, as official travel costs. We direct the agency to calculate the appropriate per diem amount due to Mr. Larsen.

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HAROLD D. LESTER, JR.
Board Judge