UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 9, 2017

CBCA 5452-RELO

In the Matter of JOSHUA D. KOSTECKA

Joshua D. Kostecka, Honolulu, HI, Claimant.

Thomas S. Spahr, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

SHERIDAN, Board Judge.

Claimant, Joshua D. Kostecka, a civilian federal employee in the Military Intelligence Civilian Excepted Career Program (MICECP), was issued permanent change of station (PCS) orders on April 6, 2015, transferring him from Seoul, South Korea, to U.S. Army Intelligence and Security Command (INSCOM), Fort Shafter, Hawaii. Claimant reported for duty on approximately September 5, 2015. The initial orders authorized thirty days of temporary quarters subsistence expenses (TQSE) on an actual expense (AE) basis for his relocation from South Korea to Hawaii.

Based on the documents provided, and according to the time line claimant submitted, he arrived on station and began the process of finding a permanent residence. On September 10, claimant initiated an offer on property located in Honolulu. The offer was accepted on September 12, and escrow was initiated on September 14. According to claimant's statement to the agency, escrow would take approximately forty-five days to complete. Via electronic messages dated September 21 and October 1, 2015, claimant requested an additional thirty days of TQSE.

On October 7, 2015, claimant received an electronic message stating that his request for an additional thirty days of TQSE was denied. However, in a separate, undated document the MICECP Division Career Program Manager recommended the following extension:

"IAW [in accordance with] [US]AFSC [United States Army Field Support Center] memo[randum] 61, an extension of ten (10 days) is approved. Purchase of home and associated time line not relevant." The referenced memorandum, Army Intelligence and Security Command Policy Memorandum 61, was issued on July 14, 2014, and is applicable to all USAFSC personnel. Paragraph 4.b(2) provides, "TQSE(AE) may be authorized for the number of days USAFSC determines necessary, not to exceed 30 days. An extension may be granted in accordance with paragraph 4.b(4)." Paragraph 4.b(4) states that TQSE(AE) extensions

> may be granted at the discretion of USAFSC when there are compelling and unforeseen reasons due to circumstances beyond the employee's control for the continued temporary lodging occupancy. Examples of such circumstance are provided in paragraph 4.f. Such extensions will not be authorized in advance but must be requested when the unforeseen circumstance occurs. The employee must request an extension in writing and provide acceptable justification and documentation to USAFSC. Extensions are not automatic, the number of days of an extension will be held to a minimum not to exceed the maximum allowed by references (a) and (d), and extensions may only be authorized by the Commander, USAFSC or the USAFSC Deputy Commanding Officer (DCO).

Paragraph 4.f goes on to list examples of compelling and unforseen circumstances that might be beyond the employee's control, including non-availability of suitable civilian housing; delayed household goods transportation and/or delivery; sudden illness, injury, or incapacitation; delays caused by the Army; acts of God; and "similar factors."

The USAFSC program manager and the Commander, USAFSC, both concurred in the career program manager's recommendation that the thirty-day TQSE extension be denied and a ten-day extension granted. However, it is not fully clear on what basis the agency granted ten days of additional TQSE but denied the remaining twenty days.[1] On October 26, 2015, the closing on the purchase of the home occurred. Claimant's HHG were delivered on the next day.

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[1] Claimant speculates that the ten additional days of TQSE was associated with the delivery of his household goods (HHG), while the time associated with the house closing was denied.

No documentation was included in the record addressing whether, when, or why MICECP denied claimant's request for reimbursement of $570.34 for temporary quarters parking fees.

This matter was submitted to the director of the Defense Finance and Accounting Service (DFAS), Travel Functional Area, Enterprise Solutions and Standards, for review. The DFAS director noted that the agency's determination that the purchase of a house and associated time line "was not relevant" was inconsistent with Joint Travel Regulation (JTR) 5802-B(2), and "[based] on the regulatory guidelines and decisions by the Board we have determined that the Agency denial is capricious and arbitrary."[2] As for the claim for temporary quarters parking fees, the DFAS director stated:

> Under the JTR [. . .] 5610 parking cost is only authorized for reimbursement for the direct route between the official points involved. Additionally, JTR [. . .] 5805-B, lists the daily allowable expenses that are authorized under TQSE(AE). Parking at the temporary lodging locations is not an authorized [expense] when on Permanent Duty Travel (PDT). Under [JTR 5805-B.3], fees and tips incident to meals and lodging are listed as to [sic] allowable for reimbursement when under TQSE(AE), since the parking fee expense was incurred during temporary lodging the fee is considered part of the lodging expense and reimbursed under the TQSE(AE) reimbursement.
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> We recommend approval of the additional TQSE days based on the agency the [sic] acted in a capricious and arbitrary manner which is inconsistent with regulatory guidance. Additional[ly], we recommend denial of the parking fees based on the above did [sic] . . . .

The DFAS director forwarded the claim to the Board on behalf of claimant pursuant to Board Rule 402(a)(2). 48 CFR 6104.402(a)(2) (2015). Claimant initially noted he had not requested that his claim be forwarded to the Board, but later acquiesced to the Board deciding this matter.[3]

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[2] The DFAS director cited to cases of the General Services Board of Contract Appeals (GSBCA), our predecessor board for matters involving travel and relocation claims, where the GSBCA addressed TQSE in the context of unforeseen delays in permanent private sector housing settlement and unforeseen short-term delays in new dwelling construction.

[3] It is unclear the extent to which the DFAS director has the authority to make a determination that the agency's decision was arbitrary and capricious, the effect of such a

After the matter was submitted to the Board, the Director of MICECP, who has authority to state the agency's position, contacted the Board saying that the agency does not contest the determination of DFAS that claimant should receive an additional thirteen days of TQSE amounting to $1258.[4] The agency concurred with the position taken by DFAS regarding the denial of the $570.34 for temporary quarters parking fees.

Discussion

The agency agreed to pay claimant for the additional thirteen days of TQSE and properly calculated that amount to be $1258, so that issue is moot. The issue remaining is whether claimant is entitled to $570.34 for temporary quarters parking fees.

Claimant posits that "there is no JTR provision which explicitly excludes parking fees for PD[S] moves[,] and in four separate updates to the JTR, the DoD [Department of Defense] removed its direct exclusion of parking fees and created provisions which tie at quarters/at lodging parking fees to quarters/lodging expenses [and t]he tie of at quarters/at lodging parking fees to quarters/lodging expenses is consistent throughout the JTR, and in fact consistent across multiple regulations (e.g., the DSSR [Department of State Standardized Regulations])."

In *Anna M. Santana*, CBCA 4903-RELO et al., 15-1 BCA ¶ 36,140, we recently noted that:

> Claimant argues that the hotel parking fees at issue here were "directly related to lodging" and that, accordingly, they should not be disallowed as "expenses of local transportation." The Board can understand how claimant might view those fees as incidental to her stay at the hotel. Nevertheless, precedent is unmistakable that those fees are to be classified as "local transportation" expenses, rather than as compensable subsistence related expenses. Our

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determination, or whether based on the DFAS director's conclusion, the agency ultimately paid claimant the extra TQSE in issue. Claimant responded that "I believe that DFAS is correct in result, but wrong on process."

[4] The $1258 amount was calculated by multiplying thirteen days at seventy-five percent of the initial maximum rate of $129 because only seventy-five percent of the maximum rate is due during the second thirty-day period. *See* 41 CFR 302-6.100.

predecessor board in considering these matters, the General Services Board of Contract Appeals (GSBCA), made this very clear:

> It is well settled that once an employee has reported for duty at the new official station and is receiving an allowance for temporary quarters subsistence expenses, non-business local transportation, including parking, may not be authorized for any purposes. *Ed Gonzalez*, GSBCA 14602-RELO, 98-2 BCA ¶ 30,041; *Brian P. Gariffa*, GSBCA 13798-RELO, 97-2 BCA ¶ 29,033. Moreover, "the cost of parking a [privately owned vehicle (POV)] at temporary quarters is a non-reimbursable local transportation expense, not a reimbursable subsistence expense." *Gonzalez*; *Robert E. Ackerman*, B-223202 (Sept. 25, 1987).

Id. at 176,399; *see also Charles J. Clemens*, GSBCA 15998-RELO, 03-1 BCA ¶ 32,223, at 159,350.

Based on recent and longstanding case law, we conclude that the temporary quarters parking fees are a non-reimbursable local transportation expense.

Decision

The claim for thirteen additional days of TQSE is moot and the claim for parking expenses is denied.

PATRICIA J. SHERIDAN
Board Judge