



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 8, 2023

CBCA 7875-RELO

In the Matter of BRIAN I.

Brian I., Claimant.

Nancy L. Caldwell, Chief, Travel Section, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

KULLBERG, Board Judge.

Claimant seeks \$3897.92 for the cost of the unreimbursed portion of an Airbnb lease, which included an Airbnb service fee, and the cost of fuel for travel from his previous permanent duty station (PDS) to his current PDS. The agency, the Department of Homeland Security (DHS), contends that claimant's entitlement to temporary quarters subsistence expenses (TQSE) ended when he moved into permanent quarters and he was only entitled to a prorated portion of the total cost of the Airbnb lease, with the exception of the service fee, which it denied in its entirety. In addition, DHS denied claimant's reimbursement request for the cost of fuel that he incurred for driving his privately owned vehicle (POV) to his new PDS. Claimant contends that he left the Airbnb before the expiration of the lease in order to move into permanent quarters but still had to pay the total lease amount. For the reasons stated below, the Board grants, in part, the claim.

Background

DHS authorized claimant's relocation to his current PDS by orders dated May 16, 2023, with an expected reporting date of July 16, 2023, at his new PDS. Claimant's orders authorized TQSE for him and his family, which included his spouse and two children, for up

to sixty days at a total daily rate of \$510.25 for the first thirty days and \$353.25 for the next thirty days.¹ Claimant's orders also authorized travel to his new PDS using his POV.

On June 30, 2023, claimant made a partial credit card payment for an Airbnb lease in the amount of \$3285.74 for him and his family to stay at his new PDS from July 20 to September 15, 2023, at a rate of \$112.56 per night. The total cost of the lease was \$5836.19, which included a "long stay" discount of \$1604. The lease costs, before the discount, included the daily rate for fifty-seven days (\$6416), a cleaning fee (\$150), taxes (\$347.34), and a service fee (\$526.85). The lease stated that the first thirty days of the lease were not refundable and that the deadline for requesting a partial refund was no later than 4:00 p.m., July 20, 2023.

On July 24, 2023, claimant submitted his first travel voucher to DHS. He claimed his payment of \$3285.74 for the Airbnb lease. He also claimed the cost of fuel for his POV, \$483.37, in addition to a separate claim for mileage to his current PDS.

On August 10, 2023, claimant made a second credit card payment for the remaining balance of the Airbnb lease in the amount of \$2550.45, and he submitted a second voucher to DHS for that amount on August 14, 2023. After staying twenty-six days at the Airbnb, claimant and his family moved into their permanent residence on August 15, 2023.

DHS paid only part of claimant's cost for the Airbnb lease by prorating the cost of the fifty-seven-day lease and reimbursing claimant for twenty-six days. The agency report summarized its reimbursement as follows:

¹ The daily rate for TQSE for claimant was \$157 for the first thirty days and seventy-five percent of that amount for the next thirty days, which totaled \$4710 for the first thirty days and \$3532.50 for the next thirty days. The daily rate for his spouse was seventy-five percent of the daily rate for the first thirty days and fifty percent of the daily rate for the next thirty days, which totaled \$3532.50 for the first thirty days and \$2355 for the next thirty days. The combined daily rate for his two children (age twelve or older) was seventy-five percent of the daily rate for the first thirty days and fifty percent of the daily rate for the next thirty days, which totaled \$7065 for the first thirty days and \$4710 for the next thirty days. The combined total amount of potential reimbursement of TQSE for the first thirty days was \$15,307.50 (\$4710 + \$3532.5 + \$7065), which amounted to a daily rate of \$510.25, and the combined total amount of potential reimbursement for TQSE for the next thirty days was \$10,597.50 (\$3532.5 + \$2355 + \$4710), which amounted to a daily rate of \$353.25.

Airbnb (Lodging receipt)	Billed	Reimbursed
Lodging (\$112.56 x 57 nights)	\$6416	\$2926.56
Less: "long stay" discount	(\$1604)	(\$731.65)
Cleaning fee	\$150	\$68.42
Service fee	\$526.85	0
Taxes	\$347.34	\$158.31
Total	\$5836.19	\$2421.64

DHS denied reimbursement for the \$483.37 cost of fuel. Claimant subsequently filed his claim with the Board in the amount of \$3897.92 for the fuel cost of \$483.37 and the \$3414.55 difference between the total amount of the Airbnb lease (\$5836.19) and DHS' reimbursement (\$2421.64). DHS filed an agency report, and claimant filed his reply.

Discussion

Airbnb Lease

This matter presents two interrelated issues regarding the Airbnb lease. The Board addresses, first, whether DHS properly denied reimbursement of the total amount of the Airbnb lease service fee. Second, the Board addresses whether DHS properly treated the Airbnb lease as a day-to-day purchase through its proration of the remaining lease costs over a fifty-seven-day period and reimbursement for twenty-six days.

Statute provides that "an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, a per diem allowance or the actual subsistence expenses, or a combination thereof, of the immediate family of the employee for en route travel of the immediate family between the employee's old and new official stations." 5 U.S.C. § 5724a(a) (2018). The Federal Travel Regulation (FTR) provides that TQSE "is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters." 41 CFR 302-6.3 (2022) (FTR 302-6.3).

DHS improperly denied reimbursement of the Airbnb service fee. The Comptroller General, which previously decided travel and relocation cases, recognized that an administrative fee related to the lease of an apartment was reimbursable as a TQSE expense

because it was “incurred incident to the occupancy of temporary quarters.” *Tita D. Corpuz*, B-256576 (Jan. 17, 1996). The General Services Board of Contract Appeals (GSBCA), which decided travel and relocation cases subsequent to the Comptroller General and before the establishment of this Board, followed the *Corpuz* decision and held that an expense paid for a “build/buy” lease provision permitting early termination was reimbursable as the cost was “part of the overall cost incident to occupancy.” *Kevin Gjertsen*, GSBCA 14298-RELO, 98-1 BCA ¶ 29,604, at 146,740. The Board finds that the service fee was a reasonable expense incurred incident to occupancy of temporary quarters.

The Board’s discussion, accordingly, turns to whether DHS properly calculated the reimbursable amount of claimant’s remaining Airbnb lease costs. The FTR provides for the payment of TQSE:

What am I paid under the actual TQSE reimbursement method?

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 . . . for you and each member of your immediate family authorized to occupy temporary quarters.

FTR 302-6.100. The FTR further provides that an employee’s entitlement to TQSE ends on the earlier of “[t]he day preceding the day [an employee] and/or any member of [his or her] immediate family occupies permanent residence quarters” or “[t]he day [an employee’s] authorized period for claiming actual TQSE reimbursement expires.” *Id.* 302-6.108.

At issue, therefore, is what, if any, reimbursement for TQSE does an employee receive for the cost of leasing lodging that is not occupied for the total lease period. In *Herbert Austin*, CBCA 1241-RELO, 09-1 BCA ¶ 34,066, the Board addressed a similar issue in which an employee leased temporary quarters for ninety days but vacated those quarters after seventy-five days, which amounted to a forfeiture of rent in the amount of \$697.60. In its decision, the Board stated:

Even so, it appears likely, based on the record before us, that claimant may be entitled to some portion or all of the forfeited rental payment. Once Mr. Austin moved to the new home, after seventy-five days in temporary quarters, he was occupying permanent quarters and the eligibility for TQSE was extinguished. Thus, the agency cannot reimburse this expense by paying

additional days of TQSE. The Board has recognized, however, that the amount of TQSE payable for the days that an employee actually occupied TQSE may be adjusted under some circumstances. For example, a lease termination expense may be deemed to be actual lodging expense whether paid through forfeiture of a deposit or otherwise. By entering into a three-month lease, Mr. Austin was able to obtain a significantly lower rate for lodging. Under these circumstances it is permissible to recalculate the daily lodging rate by dividing the full three month rental charge by the seventy-five actual days of occupancy. Mr. Austin may then be reimbursed all or part of the \$697.60 that he incurred so long as the additional daily amount does not exceed the maximum daily reimbursement authorized for TQSE under FTR 302-6.100-102. See *Lorraine M. Kummerfeldt*, GSBICA 15039-RELO, 00-1 BCA ¶ 30,750; *Glenn Baker*, GSBICA 14221-RELO, 98-2 BCA ¶ 29,856; *Kevin Gjertsen*, GSBICA 14298-RELO, 98-1 BCA ¶ 29,604.

Id. at 168,437-38 (footnote omitted).

In light of *Austin*, claimant is entitled to reimbursement of the entire amount of the Airbnb lease. The total amount of the Airbnb lease, \$5836.19, which includes the service fee, when spread over a period of twenty-six days during which claimant and his family stayed, amounted to a daily rate of \$224.47. That amount, \$224.47, is less than the authorized daily rates for TQSE for the first thirty days, \$510.25, and the thirty-first through the sixtieth day, \$353.25. DHS errs in its method of prorating the cost of the Airbnb lease over fifty-seven days. Claimant incurred no further obligation regarding the Airbnb after moving into permanent quarters. The record shows that claimant assumed the entire lease obligation at the beginning of the lease period with no recourse but to pay the full amount regardless of the amount of time he and his family stayed. The remaining days of the Airbnb lease after claimant's departure amounted to a forfeiture, which was a reimbursable TQSE expense. The Board finds that claimant acted prudently in leasing lodging at a rate that included a discount, and reimbursement of the full amount of the Airbnb lease is consistent with statute, the FTR, and Board precedent. Claimant is entitled to recover the unpaid balance of the Airbnb lease, \$3414.55, which includes the \$526.85 service fee.

Cost of Fuel

Claimant seeks reimbursement for the cost of fuel, \$483.37, that he incurred driving his POV from his former residence to his present PDS, but statute and regulation only allow for reimbursement of mileage. Statute provides that an employee on official business "is entitled to a rate per mile established by the Administrator of General Services, instead of the actual expenses of transportation, for the use of a privately owned automobile when that mode of transportation is authorized or approved." 5 U.S.C. § 5704 (a)(1). The FTR

provides for reimbursement of the “applicable mileage rate based on the type of POV . . . actually use[d].” FTR 301-10.303. Mileage is determined “by multiplying the distance traveled . . . by the applicable mileage rate.” *Id.* 301-10.301. Expenses that are not reimbursable include “[c]harges for repairs, depreciation, replacements, grease, oil, antifreeze, towage and similar speculative expenses, fuel, insurance, state and Federal taxes.” *Id.* 301-10.304. The GSBCA denied a claim for reimbursement of fuel and other travel-related expenses because “the mileage allowance is a substitute for reimbursement of the actual expenses . . . incurred.” *Nancy K. Rodgick*, GSBCA 14193-RELO, 97-2 BCA ¶ 29,302, at 145,738. Claimant was reimbursed for mileage, and no additional reimbursement for fuel is allowed.

Decision

The claim is granted in part. The agency shall reimburse claimant for the balance of the Airbnb lease, including the service fee, which amounts to \$3414.55. The remainder of the claim is denied.

H. Chuck Kullberg

H. CHUCK KULLBERG
Board Judge