UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 15, 2015

CBCA 4774-RELO

In the Matter of GAMTESSA ADDISU

Gamtessa Addisu, Bloomington, IN, Claimant.

Alisa W. James, Attorney Advisor, Blue Grass Army Depot, Department of the Army, Richmond, KY, appearing for Department of the Army.

**LESTER**, Board Judge.

Claimant, Gamtessa Addisu, complains that the Department of the Army (Army) wrongly terminated him from federal employment based upon a false allegation of fraud relating to his temporary quarters subsistence expenses (TQSE) reimbursements. He requests that we conduct a full review of the Army's handling of his travel claim and the investigation that led to his removal from federal service, as well as of the Army's review of his government credit card use and payments. For the reasons discussed below, we must dismiss much of his request as beyond our authority, and we deny his request for TQSE payments beyond that which the agency may already have made.

## Background

Mr. Addisu was assigned a permanent change of station (PCS) from Fort McKoy, Wisconsin, to the Blue Grass Army Depot in Richmond, Kentucky. When issuing Mr. Addisu's travel orders on June 5, 2014, the Army authorized thirty days of TQSE on an actual expense (AE) basis. The travel orders identified Mr. Addisu's spouse and three children as his dependents and indicated that, while Mr. Addisu would be departing from his official station in Fort McKoy, his dependents would travel from their home address in Bloomington, Indiana.

On June 9, 2014, Mr. Addisu signed and submitted a DD Form 1351-2 travel voucher for reimbursement of travel expenses of $750 for his trip from Fort McKoy to Richmond, with a "rest stop" in Bloomington along the way. In Block 12 of the form, Mr. Addisu was asked whether he was "accompanied" or "unaccompanied" by his dependents, and Mr. Addisu selected the "accompanied" box, listing the names of his wife and his three children as his "accompanied" dependents. In Block 15a of the form, he stated that "I certify that I have discontinued our residence at old PDS and have established a new residence at new PDS."

On July 7, 2014, Mr. Addisu signed and submitted another DD Form 1351-2 travel voucher reimbursement request, again saying that his wife and three children had accompanied him to his new duty station and seeking $3729.40 in TQSE. On his accompanying DD Form 2912, titled "Claim for Temporary Quarters Subsistence Expense (TQSE) (Sub-voucher)," Mr. Addisu expressly indicated in blocks 6a and 6b that both he and his dependents "vacated old residence" on May 30, 2014. He also indicated in blocks 7a and 7b that both he and his dependents "occupied new residence" on June 1, 2014, but the worksheet accompanying the sub-voucher made clear that he rented a hotel room in Richmond, Kentucky, from June 1 through 30, 2014, at costs ranging from $44.99 to $65.44 per night.[1] As support for the hotel charges, Mr. Addisu attached two folios from the Red Roof Inn in Richmond, showing the charges for each night from June 1 through 30 and indicating that the charges were paid by credit card. He claimed meal costs of $70 for each day from June 1 through 30 – $15.00 for breakfast each day, $20.00 for lunch, and $35.00 for dinner. The DD Form 2912 that Mr. Addisu signed contained the following notice to the employee: "There are severe criminal and civil penalties for knowingly submitting a false, fictitious, or fraudulent claim (U.S. Code, Title 18, Sections 267 and 1001; and Title 31, Section 3729)."

Then, on August 7, 2014, Mr. Addisu submitted another DD Form 1351-2 travel voucher reimbursement request and DD Form 2912 TQSE sub-voucher, seeking an additional $6938.61 in TQSE actual expenses for the period from July 1 through 28, 2014.[2] Although he claimed lodging expenses for each night during this period, the only supporting lodging folios that were submitted (as an attachment to his accompanying DD Form 2912) indicated hotel charges in Richmond on July 1 and 2, 2014, at $55.24 per night; in Berea,

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[1] Mr. Addisu later indicated to an investigator that, by saying that he had occupied a new residence, he meant only that he had arrived at his new duty station at the Blue Grass Army Depot.

[2] Mr. Addisu indicated in an e-mail message to a supervisor dated July 29, 2014, that he moved out of the hotel and into a permanent residence on July 28, 2014.

Kentucky, from July 6 through 12, 2014, at $41.39 per night; and in Richmond again from July 24 through 28, 2014, with nightly charges ranging from $50.80 to $60.77. He also sought reimbursement of $195 in meal costs each day from July 1 through 28, 2014 – $55.00 for breakfast each day, $70.00 for lunch, and $70.00 for dinner. In his reimbursement request, he again indicated that the lodging and meals were for himself and four dependents.

On August 20, 2014, one of Mr. Addisu's supervisors was reviewing Mr. Addisu's August 7, 2014, voucher and questioned whether Mr. Addisu's family was actually residing in Kentucky. He also questioned why all meal claims annotated on his DD Form 2912 ended in ".00" when actual expenses, rather than rounded or estimated figures, were to be listed. When questioned about the expenses, Mr. Addisu indicated that he had researched his entitlements and that the claims were correct as listed.

The Army paid some of Mr. Addisu's TQSE reimbursement requests, though the record is unclear as to the scope of those payments.

On September 15, 2014, the Chief of the Quality Assurance Division for the Blue Grass Army Depot (QAD Chief) asked Mr. Addisu where his family was living. Mr. Addisu responded that his family was living in Indiana, a representation that the QAD Chief believed contradicted the information on Mr. Addisu's DD Form 2912 submissions.

An investigator for the Directorate of Emergency Services at the Blue Grass Army Depot issued an investigative report on December 14, 2014, in which he asserted that he was conducting two investigations into Mr. Addisu's activities: one dealing with the veracity of Mr. Addisu's travel voucher reimbursement requests, and another dealing with alleged misuse of a government travel credit card. Focusing on the government travel credit card investigation, the investigator reported that Mr. Addisu had violated an Army regulation when he used his government travel credit card to purchase unauthorized items between January and June 2014. In the report, the investigator also determined that Mr. Addisu was delinquent in paying the balance on his government credit card.

On January 8, 2015, the investigator interviewed Mr. Addisu, who acknowledged that, contrary to the representations on his travel vouchers, his dependents had not traveled with him to Richmond. Mr. Addisu indicated that he had represented on his travel vouchers that his dependents had accompanied him because he intended for them to come to Richmond at some future date. Mr. Addisu also explained the reasons that his meals costs had risen significantly in his TQSE reimbursement request between his July 7, 2014, request and his August 7, 2014, request because "I researched the regulation and found I was entitled to the greater amount because of my dependents. I purchased gift cards for restaurants in order to take home for my family to have meals."

Subsequently, on January 12, 2015, the investigator issued another investigative report, this time finding that Mr. Addisu had violated the Joint Travel Regulations (JTR) by making false, fictitious, or fraudulent claims in his DD Form 1351-2 travel vouchers.[3] The investigator determined that Mr. Addisu had falsely represented in those forms that he was being accompanied by his dependents for purposes of obtaining travel reimbursements and that, contrary to Mr. Addisu's representations on the forms, his family had stayed in Bloomington and had not traveled to Richmond. In addition, the investigator determined that Mr. Addisu had purchased restaurant gift cards, which he would then take to his family in Bloomington, and then claimed the amounts spent for the gift cards as his "meal" travel costs in his reimbursement forms.

On March 19, 2015, the QAD Chief issued a Notice of Proposed Removal, which was presented to Mr. Addisu on March 24, 2015, proposing Mr. Addisu's removal from federal service based upon three charges: (1) Mr. Addisu had falsified information on his travel vouchers; (2) he had misused a government travel credit card, including using it to purchase gift cards for which he then sought reimbursement as TQSE; and (3) he had failed to pay his government travel credit card in a timely manner. On May 5, 2015, after having provided Mr. Addisu an opportunity to respond to the notice, the agency issued a Notice of Removal, removing Mr. Addisu from federal service and informing him that he was entitled to file an appeal of the removal decision with the Merit Systems Protection Board (MSPB).

Subsequently, on May 26, 2015, Mr. Addisu informed the agency by e-mail message that he was adding references to his travel reimbursements and the investigation against him to a previously submitted Equal Employment Opportunity (EEO) complaint that was pending before the agency. He asserted that the manner in which the agency conducted the investigation evidenced that his supervisors were acting in a discriminatory manner. The record does not indicate whether the EEO matter has been resolved or whether Mr. Addisu has filed any appeal of his removal with the MSPB or in any other forum.

On May 27, 2015, Mr. Addisu submitted his claim to this Board. He asserts that he was "wrongfully terminated from federal employment" based upon alleged fraud relating to his TQSE reimbursements. He also complains "that the agency has illegally garnished [his]

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[3] It is unclear which section(s) of the JTR the investigator believes Mr. Addisu violated. The investigator cites only to a section of Army Regulation 190-11, which addresses physical security of arms, ammunition, and explosives, and a section of Army Regulation 380-67 dealing with the clearance and sensitive position standard under personnel security programs. These Army regulations seemingly have nothing to do with misstatements on forms seeking TQSE reimbursement.

wages without any notification based on the government travel card balance" and that the agency's failure to pay his TQSE has harmed his ability to pay the balance on his government credit card. He has asked us to conduct "a full review of the agencies [sic] handling of [his] travel claim."

## Discussion

### I. Mr. Addisu's Request for a Review of the Agency's Investigation

Mr. Addisu has asked us to undertake a broad review not only of his TQSE claim, but also of the Army's investigation of his travel claim and of associated matters that he believes directly relate to his removal from federal service. Although we possess authority to review the agency's decision not to pay TQSE, we lack authority to undertake any broader review of the agency's activities.

Pursuant to statute, the Administrator of General Services possesses the authority to resolve "claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station." 31 U.S.C. § 3702(a)(3) (2012). Through a delegation from the Administrator, this Board is authorized to exercise that authority. *Mark J. Lumer*, CBCA 1079-TRAV, 08-1 BCA ¶ 33,819, at 167,398. "The Board's authority in this matter or in any other case regarding travel or relocation, therefore, is by delegation of statutory authority." *Christopher G. Cover*, CBCA 3875-RELO, 15-1 BCA ¶ 35,892, at 175,464. As our predecessor board for travel and relocation matters, the General Services Board of Contract Appeals (GSBCA), explained in *Eric B. Fort*, GSBCA 16302-TRAV, 04-1 BCA ¶ 32,541 (2003), that authority is limited to the settlement of travel claims and does not encompass more expansive reviews of employment disputes or the propriety of agency investigations:

> Our authority is far more circumscribed than [claimant] perceives. We have the power, pursuant to 31 U.S.C. § 3702 and a delegation of authority from the Administrator of General Services, to "settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station." 31 U.S.C. § 3702(a)(3) (2000). Beyond that, however, the Board cannot do the sorts of things [claimant] wants us to do. As a quasi-judicial tribunal, the Board does not perform independent investigations with regard to cases presented to it. *Marion T. Silva*, GSBCA 15673-RELO, 02-1 BCA ¶ 31,815; *Pamela R. Harris*, GSBCA 15645-RELO, 01-2 BCA ¶ 31,640. Whether the [agency's] duplicate payments on [claimant's] travel vouchers, and its methods for dealing with the issue, are systemic problems worthy of investigation

> and/or disciplinary action is a question we must leave to agency management. Similarly, we have no authority to direct an agency to modify in any way an employee's personnel files or to pay an employee in advance for expenses of official travel he undertakes.

*Id.* at 160,973.

Accordingly, we are authorized to review Mr. Addisu's challenge to the Army's decision not to pay all of the TQSE that Mr. Addisu requested. Beyond that, Mr. Addisu will have to look to other fora for relief. He has submitted an EEO complaint to the agency alleging discrimination and, through the language contained in his Notice of Removal, is aware of his appeal rights to the MSPB arising out of his removal from federal service. We have no basis upon which to interfere in such matters.

## II. Mr. Addisu's TQSE Claim

### A. TQSE After the Authorized TQSE Period Expired

Mr. Addisu seeks to recover TQSE from June 1 through July 28, 2014, a period of fifty-seven days. Yet, his travel orders only authorized thirty days of TQSE. "A TQSE allowance 'is intended to reimburse [a transferred] employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters.'" *Melinda Slaughter*, CBCA 754-RELO, 07-2 BCA ¶ 33,633, at 166,579 (quoting 41 CFR 302-6.3 (2006)). Nevertheless, "[i]t is totally within the discretion of the agency whether or not to authorize TQSE." *Scott E. Beemer*, CBCA 4250-RELO, 15-1 BCA ¶ 35,960, at 175,712 (quoting *Neal K. Matsumura*, CBCA 2341-RELO, 11-2 BCA ¶ 34,829, at 171,363); *see* 41 CFR 302-6.6 (2014) ("Must my agency authorize payment of a TQSE allowance? No, your agency determines whether it is in the Government's interest to pay TQSE."). "TQSE is governed by 5 U.S.C. § 5724a(c)(1), which 'says that "an agency *may* pay" these benefits,' but does not have to do so." *Beemer*, 15-1 BCA at 175,712 (quoting *Christopher Sickler*, CBCA 1010-RELO, 08-1 BCA ¶ 33,825, at 167,421 (italics in original)). Further, "once the agency has authorized TQSE, it retains broad discretion to decide whether 'to grant extensions of TQSE,' and that exercise of discretion 'will not be overturned unless that decision is found to have been arbitrary and capricious.'" *Stephen J. Collier*, CBCA 4395-RELO, 15-1 BCA ¶ 35,979, at 175,801 (quoting *Rajiv R. Singh*, GSBCA 16892-RELO, 06-2 BCA ¶ 33,418, at 165,672). Here, Mr. Addisu has identified nothing arbitrary or capricious about the agency's decision to grant only thirty days of TQSE and not to extend that benefit for an additional period of time.

B. Mr. Addisu's Meal Reimbursement Requests

Because the agency granted Mr. Addisu only thirty days of TQSE, we need only consider his TQSE claim for the period running from June 1 through June 30, 2014. Nevertheless, because all of his meal requests from June 1 through July 28, 2014, suffer from the same defect, we address all of them here.

As previously discussed, in his reimbursement request for meals for the month of June 2014, Mr. Addisu claimed $15.00 for breakfast each day during that period, $20.00 for lunch, and $35.00 for dinner. These amounts never varied. During the next month, Mr. Addisu significantly increased the amount of his daily meal requests, but again claimed exactly the same amounts each day: $55.00 for breakfast, $70.00 for lunch, and $70.00 for dinner.

"TQSE reimbursement is limited to actual expenses incurred, up to the maximum authorized, provided the expenses are directly related to temporary quarters occupancy, are reasonable in amount, and are substantiated." *Adil F. Khan*, GSBCA 15756-RELO, 02-2 BCA ¶ 31,966, at 157,908. A "[c]laimant is not entitled to reimbursement for the claimed meal expenses [if] he has not substantiated that the claimed costs were . . . actual expenses" for actual meals during the TQSE period. *Id.* Further, "even where some amounts must have been spent for meals, we deny reimbursement where there is no credible basis upon which the agency can determine what those amounts actually were. Absent evidence of this nature, the agency is not required to approve any payment at all." *Willie J. Garrard*, GSBCA 15811-RELO, 02-2 BCA ¶ 31,935, at 157,767 (citing *Donald Mixon*, GSBCA 14957-RELO, 00-1 BCA ¶ 30,606, at 151,117 (1999)); *see Mark G. Derby*, GSBCA 15682-RELO, 02-2 BCA ¶ 31,989, at 158,092.

In *Michael D. Fox*, GSBCA 13712-RELO, 97-2 BCA ¶ 29,217, the GSBCA recognized that an agency is entitled to question claimed meal costs that are suspicious on their face and to decline to pay those costs absent some type of "credible contemporaneous documentation" (either receipts or other verifying documents). *Id.* at 145,395. The claimant there submitted a voucher seeking payment of actual expenses of exactly the same amount - $24.50 - for every meal eaten over a three-week period. In reviewing the agency's denial of recovery for any meal expenses, the board made clear that "reimbursement for subsistence costs incurred during relocation is for actual expenses." *Id.* Although recognizing that a claimant is entitled to justify his expenses through a certified statement, rather than through receipts, the board determined that the information available to the agency made clear that the claimant had not identified in his certified statement the amount of the actual costs that he had specifically incurred, entitling the agency to decline any meals reimbursement. *Id.*

Here, Mr. Addisu claimed exactly the same amount for his meals every day from June 1 to 30, 2014, and did the same again (although at much higher amounts) from July 1 to 28, 2014. All of his alleged meals over the course of fifty-seven days ended with ".00." Even without Mr. Addisu's subsequent admission that he was purchasing restaurant gift cards as part of his actual-expense meal per diem, the manner in which he claimed meal reimbursements made it clear – on the face of the reimbursement request itself – that the monies being sought were not the actual expenses for meals that Mr. Addisu ate while on TQSE.

The record here is unclear whether, and to what extent, the agency reimbursed any of Mr. Addisu's claimed meal expenses. Nevertheless, to the extent that the agency declined to pay for any meals, it was within its rights to do so, and we will not order it to make any further payments.

C. Reimbursement of Mr. Addisu's Lodging Expenses

The record makes clear that Mr. Addisu actually incurred lodging expenses both during his thirty-day TQSE period and after that TQSE period ended. The agency provided us with copies of Mr. Addisu's hotel receipts for three periods of time (June 1 through July 2; July 6 through 12; and July 24 to 28) that establish those lodging expenses. Although the record here is unclear whether, and the extent to which, the agency paid Mr. Addisu for that lodging, the agency asks us to deny any further reimbursement of lodging because of Mr. Addisu's alleged fraud in seeking his TQSE reimbursement. The agency asserts that, in his TQSE reimbursement requests, Mr. Addisu falsely and fraudulently stated that he was accompanied by his four dependents each day of his time in temporary quarters. The agency also states that Mr. Addisu's use of his government travel credit card to purchase restaurant gift cards, the price of which he then attempted to recover through his TQSE meals allowance, was fraudulent.

The Federal Travel Regulation (FTR) expressly addresses the effect of a traveler's attempt to defraud the Government in seeking reimbursement of travel costs:

> **What happens if I attempt to defraud the Government?**
>
> (a) You forfeit reimbursement pursuant to 28 U.S.C. 2514; and
>
> (b) You may be subject under 18 U.S.C. 287 and 1001 to one, or both, of the following:
>
> (1) A fine of not more than $10,000, or

(2) Imprisonment for not more than 5 years.

41 CFR 301-52.12 (2014). On its face, the civil forfeiture statute to which the FTR cites – known as the Forfeiture of Fraudulent Claims Act, 28 U.S.C. § 2514 (2012) – applies only to claims pending before the Court of Federal Claims. Nevertheless, the Comptroller General long ago recognized that, even though the statute itself has "no direct application in the audit of disbursing officers' accounts," it would not "be proper for a disbursing officer to pay or for this Office to allow a claim thought to be fraudulent," and it held that an officer who suspects fraud in connection with a travel claim should deny payment based upon the principles underlying the statute. 41 Comp. Gen. 285, 288 (1961).

In applying those principles to travel claims, the Comptroller General created what he called the "tainted day" rule to assist in determining when, and to what extent, a traveler's claims should be denied when some portion of the claims was supported by fraudulent misrepresentations. *See* 70 Comp. Gen. 643, 644 (1991); 61 Comp. Gen. 399, 402 (1982). He determined that "each separate item of pay and allowances is to be viewed as a separate claim and we do not believe that the fact that several such items may included in a single voucher for purposes of payment affords sufficient basis for concluding that they have lost their character as separate claims." 41 Comp. Gen. at 288. Nevertheless, he treated subsistence payment requests covering a single day – even if they involve different or separate components of subsistence (that is, the lodging component, the laundry component, or the meals component) – as indivisible: "[u]nder the tainted day rule, . . . a fraudulent claim for reimbursement for any part of a single day's subsistence expenses is said to taint with fraud the entire day's subsistence expenses." *Kenneth R. Gould*, GSBCA 15527-RELO, 01-2 BCA ¶ 31,566, at 155,874 (citing *Clyde L. Brown*, B-206543 (Sept. 8, 1982)); *see* 61 Comp. Gen. at 403 ("when any day is determined to be tainted by fraud, all expenditures for per diem on that day are excluded entirely from the calculation"); *Department of the Air Force*, 57 Comp. Gen. 664, 667 (1978) ("A fraudulent statement for any subsistence item taints the entire subsistence claim for that day."). Accordingly, if a traveler fraudulently misrepresented meal costs on a particular day, reimbursement of any subsistence costs that the traveler claims for that day – whether for meals, lodging, or laundry – would be denied.

The GSBCA adopted the Comptroller General's "tainted day" rule as its own, *see Gould*, 01-2 BCA at 155,874, and we are bound by that decision of our predecessor board. *See Business Management Research Associates, Inc. v. General Services Administration*, CBCA 464, 07-1 BCA ¶ 33,486, at 165,989 (adopting decisions of predecessor boards as precedent). In adopting that rule, the GSBCA discussed the rule's rationale as applied to claims for TQSE and explained why, if an employee inflates only one component of subsistence expenses (in that case, the cost of lodging) on a particular day, the employee's fraud necessarily infects the entire day's subsistence claim:

> A fundamental issue raised with regard to fraud in a particular claim is the degree to which that fraud may taint a claimant's other requests for payment. The common sense rule followed by [the General Accounting (now Accountability) Office, which is headed by the Comptroller General] has traditionally been that each separate item, i.e. one for which the employee can make a claim independently of other entitlements, stands on its own and is not tainted by the presence of fraud in another item which may appear in the same voucher or request for payment. *E.g.*, *Department of the Air Force*, 57 Comp. Gen. 664 (1978). In the case of claims for per diem or for TQSE, the amount sought for each day is looked upon as a separate item, but the various components of the claim for that specific day are not considered separate items since they share a common statutory and regulatory basis for entitlement. Accordingly, pursuant to the tainted day rule, a fraudulent claim for lodging will effectively taint a claim for all other per diem or subsistence benefits for that day. *See* 59 Comp. Gen. 99 (1979).

*Gould*, 01-2 BCA at 155,874; *see Secretary of the Air Force*, B-172915 (Sept. 27, 1971) ("most items of pay and allowances are computable on a daily basis").

The tainted day rule "applies only to situations in which the agency has reasonable suspicion of fraud supported by evidence 'sufficient to overcome the usual presumption of honesty and fair dealing on the part of the claimant.'" *Christine Griffin*, GSBCA 15818-RELO, 02-2 BCA ¶ 31,925, at 157,732 (quoting *Gould*, 01-2 BCA at 155,875 (quoting *Department of the Air Force*, 57 Comp. Gen. at 668)). To forfeit a claim under section 2514, "the government must 'establish by clear and convincing evidence that the contractor knew that its submitted claims were false, and that it intended to defraud the government by submitting those claims.'" *Daewoo Engineering & Construction Co. v. United States*, 557 F.3d 1332, 1341 (Fed. Cir. 2009) (quoting *Commercial Contractors, Inc. v. United States*, 154 F.3d 1357, 1362 (Fed. Cir. 1998)). We apply that same standard under the "tainted day" rule to TQSE claims. *Khan*, 02-2 BCA at 157,907; *see Doubtful or Fraudulent Travel Claims*, B-230385 (Jan. 16, 1990) ("the burden of establishing fraud rests with the party alleging fraud and . . . it must be proven by evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing"). Accordingly, "[t]he agency evidence must support a reasonable suspicion that claimant knowingly submitted a false claim with intent to deceive." *Khan*, 02-2 BCA at 157,907. A claimant's inadvertent error, negligence, inability to provide supporting documentation, or even ineptitude does not meet this standard. *Alcatec, LLC v. United States*, 100 Fed. Cl. 502, 517 (2011), *aff'd*, 471 F. App'x 899 (Fed. Cir. 2012); *Floyd S. Wiginton*, GSBCA 15583-RELO, 01-2 BCA ¶ 31,605, at 156,190; *Gould*, 01-2 BCA at 155,875.

Even though Mr. Addisu denies that his travel reimbursement requests were fraudulent, tribunals ordinarily establish fraud from circumstances rather than through admissions. *Kamen Soap Products Co. v. United States*, 124 F. Supp. 608, 620 (Ct. Cl. 1954); *see Rea v. Missouri*, 84 U.S. (17 Wall.) 532, 543 (1873) ("Circumstantial evidence [of fraud] is not only sufficient, but in most cases it is the only proof that can be adduced."); *New York Market Gardeners' Association v. United States*, 43 Ct. Cl. 114, 137 (1908) ("it is not necessary in order to establish fraud that . . . the party making the allegation . . . prove it by direct and positive evidence," and "circumstantial evidence is frequently of more force than direct testimony"); B-230385 ("Circumstantial evidence may be used if it establishes a clear inference of fraud and constitutes more than suspicion or conjecture."). Here, Mr. Addisu falsely represented on his travel reimbursement request that his four dependents were traveling with him on each of the days for which he was authorized TQSE. That representation was material to his ability to obtain reimbursement beyond the then-applicable $129 maximum per diem that he would have been authorized were he traveling alone. In addition, Mr. Addisu acknowledged to the agency investigator that he was purchasing restaurant gift cards for later use by his family and using those gift cards as a basis for his meal reimbursement requests, while the family was residing in its own home in Bloomington rather than in temporary quarters. Although the agency has not identified for us the particular days during his authorized TQSE on which Mr. Addisu purchased gift cards, the record is clear that his meal reimbursement requests encompassed the gift card purchases and that the gift card purchases were essentially spread across the totality of his reimbursement requests.

Despite denying the allegations of fraud, Mr. Addisu has presented no rational explanation as to how he legitimately could have believed that he could misrepresent his dependents' travel status or seek reimbursement for gift cards under the guise that they were for legitimate TQSE meals. "Claims against the United States must be based on true facts and it is incumbent upon the claimant to furnish evidence satisfactorily establishing the clear liability of the United States to pay the claim." *Staff Sergeant Edward T. Sellers, Ret.*, B-166533 (Apr. 16, 1969). In these circumstances, the agency has established that each day of Mr. Addisu's subsistence reimbursement requests was tainted. Under the "tainted day" rule, Mr. Addisu's fraudulent request for reimbursement of his meals precludes recovery of his lodging costs. Accordingly, to the extent that the agency has not paid for portions of Mr. Addisu's lodging, it properly declined to do so.

Decision

For the foregoing reasons, we deny Mr. Addisu's claim for TQSE.

HAROLD D. LESTER, JR.
Board Judge