



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 7, 2007

CBCA 474-TRAV

In the Matter of DEATRICE S. PATTERSON BESONG

Deatrice S. Patterson Besong, Upper Marlboro, MD, Claimant.

Robert J. Huttenlocker, Director, Compliance Review Staff, Foreign Agricultural Service, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

BORWICK, Board Judge.

Claimant, Ms. Deatrice S. Patterson Besong, seeks additional reimbursement from the Department of Agriculture, agency, through the Foreign Agricultural Service (FAS), of expenses allegedly incurred during her long-term temporary duty (TDY) in Moscow, Russia. For the reasons below, we deny most of her claim.

Background

Meals and Incidental Expenses (M&IE)

By travel authorization of March 7, 1999, the agency authorized claimant's extended travel from Washington, D.C., to Moscow, Russia, from March 10 through September 30, 1999, in order to monitor food aid to Russia. In that authorization, and before claimant commenced her trip, the agency authorized per diem as follows:

PER DIEM ALLOWANCE-GOVERNMENT HOUSING PROVIDED WITH KITCHEN FACILITIES, NO LODGING EXPENSE REQUIRED. M&IE- FIRST 15 DAYS @ 100%, SECOND 15 DAYS AT 50%; AND THIRD 15 DAYS AT 25%, NONE THEREAFTER.

The agency also granted claimant an allowance of \$350 for miscellaneous expenses; mail and/or storage of household effects, not to exceed one thousand pounds; excess baggage in accordance with regulations; and five days of temporary quarters in the Washington, D.C., area upon departure to and arrival from the TDY location.

Reimbursement for local travel between the TDY residence and the TDY station--the United States Embassy in Moscow--was not authorized. The authorization also stated that personal phone calls from Moscow should be placed on Government-provided free phone lines and that all other calls must have been approved specifically by claimant's supervisor in order to be reimbursed. The agency also states in its submissions to the Board that it advised claimant that residential cable television fees would not be reimbursed.

Claimant resided in Moscow from March 19 through September 30, 1999, in a Government-furnished apartment complex housing agency workers. The apartments had stoves, refrigerators, and ovens. The agency had difficulty reconstructing the travel records of a trip almost seven years old, since claimant's travel records were destroyed, but posits that claimant was paid \$3190, which total was the sum of M&IE for her trip. That total included reimbursement of \$230 for the first five days in Washington, D.C., before travel abroad and another \$230 for the five days in Washington after her return. The agency also reimbursed claimant for her M&IE while in Moscow at the M&IE rates stated in her travel authorization for the first, second, and third fifteen-day periods while claimant was in Moscow.

Claimant's calculation of the total for the M&IE claim she thinks is due is not clear. Claimant told the agency that she was entitled to an additional \$10,374, which claimant says was the difference between the amount the agency reimbursed her for the M&IE and the reimbursement to which she was entitled for every day she resided in Moscow. In a supplemental filing to the Board, claimant now claims that for her M&IE in Moscow, she is entitled to 113 days of reimbursement of M&IE at the full rate of \$104 per day. For those days, claimant now says she should have received \$10,350, not \$10,374, and that she was reimbursed \$2678.

The total M&IE reimbursement that should have been paid to claimant for the Moscow portion of the trip at the rates for the time periods stated in the authorization is \$2730. That figure is fifty-two dollars more than claimant says she was reimbursed. Claimant says she was paid the full M&IE rate for fourteen days, half of the full M&IE rate for sixteen days, and a quarter of the full M&IE rate for fifteen days. Thus, according to claimant, she was deprived of one day's reimbursement at the full \$104 rate and was paid for an extra day at the fifty percent rate.

Claimant says she is entitled to the additional reimbursement for M&IE because other employees living in the same apartment complex were granted reimbursement of M&IE for each day of TDY in Moscow at the full daily M&IE rate. The agency explains that those individuals were with another branch of the agency--the Farm Service Administration--and that those individuals stayed in Moscow for about two months, not the six months authorized for claimant. In contrast, monitors with the FAS in Russia served details of six months or more. Each of those monitors, including the claimant, was authorized per diem on the same sliding scale basis. The agency explains that in claimant's case the agency followed FAS reimbursement policy that had been in place for between eight and ten years.

Local Transportation and Miscellaneous Expenses

The agency disallowed claimant reimbursement of \$180 in cable television fees, \$455 in personal phone charges, \$590.40 in local travel and \$150 in check cashing fees. Claimant says the \$180 cable television fee was for six months of cable television in her Government-furnished Moscow apartment at \$30 per month. The agency disallowed that expense because (1) appellant incurred no lodging cost and (2) the expense would have been covered by the miscellaneous housing expense of \$350. Claimant argues that because she did not voucher for the \$350, the cable television fee should be reimbursed.

The agency reimbursed claimant \$778 for personal telephone charges, where claimant provided bills and receipts. Claimant seeks an additional reimbursement of \$455 for telephone charges. The agency denied these charges because claimant did not provide bills or receipts to support the charges. In response, claimant certified that the phone calls were made to her family using prepaid telephone cards.

Claimant seeks reimbursement of \$590.40 for local transportation charges. Apparently, this was to cover the cost of limousine service provided by Greenline Auto, a Moscow-based limousine service. After claimant's trip, the agency adopted the policy of reimbursing employees \$4.80 per day (\$2.40 per trip) for travel between the embassy and the employee's apartment complex residence. The agency retroactively reimbursed claimant \$187.20 under that policy.

Claimant sought reimbursement of \$150 in check cashing fees. Claimant says that the check cashing fees were one percent of the amount of the check. The agency denied reimbursement because check cashing fees were not specifically mentioned in regulation as a type of miscellaneous expense that could be reimbursed. The agency also says that claimant did not provide receipts for the expense.

Discussion

In deciding this case, we refer to the version of the Federal Travel Regulation (FTR) in effect during claimant's TDY in 1999. The FTR allowed for a reduction in per diem in advance of travel. In its question and answer format, the FTR provided:

Under what circumstances may my agency prescribe a reduced per diem rate lower than the prescribed maximum?

Under the following circumstances:

When your agency can determine in advance that the lodging and/or meal costs will be lower than the per diem rate; and

The lowest authorized per diem rate must be stated in your travel authorization in advance of your travel.

41 CFR 301-11.200 (1998).

The agency, therefore, may lower the per diem payment for extended travel if it determines in advance that there is a likelihood that extended travel and known arrangements will result in a lower per diem expenditure than that prescribed by the maximum rate. *Nidavan Kanasawadse*, GSBICA 16508-TRAV, 05-1 BCA ¶ 32,913. Reduced-rate lodging and an employee's ability to prepare meals in the lodging will support an agency's determination that the reduction in per diem rates was reasonable and not an abuse of discretion. *Patrick S. Twohy*, GSBICA 15491-TRAV, 01-1 BCA ¶ 31,408. Here, the agency housed claimant in Government-furnished lodgings with a kitchen. The agency followed the FTR in making its advance determination that subsistence at a reduced rate would be appropriate. Although the agency might have rationally decided that a lengthy period of TDY in the unfamiliar environment of Russia supported payment of subsistence expenses based upon the full per diem rate for each day of claimant's TDY, we cannot conclude that the decision the agency did make was without reason.

Claimant argues that she is entitled to the claimed per diem expenses because other employees living in her apartment complex received the subsistence expenses at the full rate for each day of their TDY. Those employees, however, were employed by another branch of the agency, and those employees' TDYs were significantly shorter in length than claimant's. Moreover, the FAS consistently applied its reduced subsistence policy for all of its employees on long-term TDY. Claimant's argument that she was treated differently is not persuasive.

Local transportation and miscellaneous expenses

Claimant has not established her entitlement to reimbursement of the cable television fees, the phone calls, or the additional local transportation that she claims. The cable television expense was to be included in the \$350 miscellaneous expense allowance, for which claimant did not voucher. The six-year statute of limitations has passed, and it is too late to claim the cable television fee as a miscellaneous expense now. 31 U.S.C. § 3702(b)(1)(2000).

Claimant, citing 41 CFR 301-11.15, argues that the cable television fee of \$150 was an authorized lodging expense. Claimant misconstrues the import of that section. Cable television fees may be considered part of the lodging expense when an employee rents an apartment on a long-term basis. Here, the Government, not claimant, rented the apartment; claimant incurred no lodging expense. Second, cable television fees are payable as a long-term lodging expense only when a cable television was ordinarily included in the price of a commercial hotel room at the TDY locale. 41 CFR 301-11.15(e). Claimant has not established that cable television was ordinarily included in the price of a commercial hotel room in Moscow.

Under the claimant's travel authorization, personal phone calls were to be made from the embassy phone and any additional expenses for personal calls were to be approved by the supervisor. Claimant has not demonstrated that the additional phone calls, supposedly resulting in the \$455 charge, were approved by her supervisor. The additional local transportation charges claimant incurred were also not authorized.

Claimant seeks \$150 in check cashing expenses. The FTR made payment of miscellaneous expenses discretionary with the agency. 41 CFR 301-12.1. The agency argues that certain fees to obtain money, such as automatic teller machine fees, are mentioned in that provision but that check cashing fees are not mentioned. That section, however does not provide an exhaustive list of reimbursable items and the check cashing fee would be included in the category of reimbursable expenses, if authorized by the agency. *Scott J.N. McNabb*, GSBCA 15211-TRAV, 00-2 BCA ¶ 31,005. The agency, however, is properly concerned about claimant's proof that she incurred that expense. Accepting claimant's statement that check cashing fees were one percent of the value of each check, if claimant spent \$150 for check cashing expenses, that means that claimant cashed \$15,000 in checks over the six-month period she was in Moscow. Claimant may recover that expense if she provides satisfactory proof to the agency that she actually incurred the expense.

The only additional reimbursement to which claimant might be entitled is \$52 for an additional extra day of full M&IE reimbursement that claimant says is missing, as adjusted

for the extra day's overpayment at a fifty percent rate. The agency should review whatever of its records remain to determine if claimant was in fact paid \$104 per day for the first full fifteen-day period of claimant's TDY and paid at the proper rate for the remaining periods. If the agency determines that claimant was paid only for fourteen days at the full rate, and overpaid by one day at the fifty percent rate, it is to pay claimant an additional \$52. The Board denies the rest of the claim.

ANTHONY S. BORWICK
Board Judge