



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 9, 2007

CBCA 767-RELO

In the Matter of EARL AUSTIN RIVENBURG

Earl Austin Rivenburg, El Segundo, CA, Claimant.

MSgt. Michael W. Standke, Travel Pay Analyst, Accounting and Finance Office,
Department of the Air Force, Denver, CO, appearing for the Department of the Air Force.

FENNESSY, Board Judge.

Background

Mr. Earl Austin Rivenburg is a civilian employee of the Department of the Air Force. On October 27, 2006, orders were issued to Mr. Rivenburg for a permanent change of station (PCS) from the Department of the Army in Molesworth, United Kingdom, to the Department of the Air Force in Los Angeles, California. The orders authorized commercial air travel, per diem expenses for Mr. Rivenburg and his wife, and shipment and storage of household goods.

Mr. Rivenburg was scheduled to leave the United Kingdom on January 7, 2007. On December 22, 2006, he forwarded his itinerary to his contact at the new duty station, Ms. Amanda Pulsipher, and inquired about the details of his temporary lodging once he arrived in Los Angeles. At that point Ms. Pulsipher realized that Mr. Rivenburg's orders needed to be amended to include temporary quarters subsistence expenses (TQSE). Ms. Pulsipher informed Mr. Rivenburg of the need to amend the orders and stated that he would be authorized thirty to sixty days of reimbursable lodging and miscellaneous expenses. She recommended that he make a reservation at the government rate at a local hotel and suggested the Marriott Residence Inn in Manhattan Beach, among other hotels. The orders were ultimately amended on January 30, 2007, to authorize actually incurred TQSE for sixty days, real estate expenses, and miscellaneous expenses.

Mr. Rivenburg and his spouse occupied temporary quarters at the Residence Inn in Manhattan Beach, California, for forty-seven days, from January 7 through February 22, 2007, at the government daily rate of \$110 plus \$11 tax and a \$.10 convention fee, for a total daily charge of \$121.10. Mr. Rivenburg included these lodging expenses plus his expenses for meals, laundry, and dry cleaning in his voucher for reimbursement of TQSE.

The agency computed Mr. Rivenburg's claim for reimbursement of TQSE beginning on January 8, 2007, at the standard CONUS rate of \$99 per diem for Mr. Rivenburg and seventy-five percent of the standard CONUS rate, or \$74.25, per diem for his wife, for a maximum allowable reimbursement of \$173.25 per day for the first thirty days. For the final seventeen days, these rates were reduced to seventy-five percent of the standard CONUS rate for Mr. Rivenburg and fifty percent of that rate for Mrs. Rivenburg for a combined daily total of \$123.75. 41 CFR 302-6.100 (2006). The total amount of reimbursement was \$7128. The agency did not include January 7 in its calculation despite claimant's Residence Inn receipt showing that the couple occupied temporary quarters that night.

In response to the claim, the agency acknowledged that it had erroneously failed to reimburse Mr. Rivenburg for TQSE for the night of January 7 and that it had erroneously reimbursed Mr. Rivenburg for a partial day of per diem for January 8. Because of these errors, the agency stated that it owes Mr. Rivenburg an additional \$122.06.

Mr. Rivenburg has asked that the Board review the agency's determination upon the ground that he occupied temporary lodging at the government rate as was recommended by the Air Force and was never informed of the limits of allowable reimbursement for TQSE. He seeks to recover \$2631.60, the difference between his actually incurred TQSE and the amount reimbursed by the Air Force. Mr. Rivenburg has furnished the Board with a memorandum from Colonel Delane A. Aguilar, Director, Financial Management and Comptroller, Headquarters Space and Missile Systems Center, Department of the Air Force. Colonel Aguilar recommended that Mr. Rivenburg be reimbursed the \$2631.60, which he said Mr. Rivenburg incurred in excess of the maximum allowable amount, to avert a grave injustice due to the inaccurate information provided by Mr. Rivenburg's Air Force sponsor. For the reasons discussed below the agency correctly applied the regulations and computed the reimbursement due Mr. Rivenburg.

Discussion

When the Government transfers an employee from one permanent duty station to another in the interest of the Government, the agency has authority to pay the subsistence expenses the employee incurs while occupying temporary quarters, provided certain

requirements are met. 5 U.S.C. § 5724a(c) (2000). The Federal Travel Regulation (FTR) implements the statute; the Joint Travel Regulations (JTR), applicable to civilian employees of the Department of Defense, supplement the FTR. *Donald D. Fithian, Jr.*, GSBCA 16712-RELO, 06-1 BCA ¶ 33,204. The regulations in effect at the time claimant reported to the new duty station govern the reimbursement of his expenses. 41 CFR 302-2.3; *Monika Mayr*, GSBCA 16685-RELO, 05-2 BCA ¶ 33,106.

Chapter 302 of the FTR applies to relocation expenses of employees who are authorized a PCS. It is a matter of agency discretion whether to authorize a TQSE allowance in connection with a PCS. 41 CFR 302-6.6; JTR C5362. *Donald D. LaChance*, GSBCA 16911-RELO, 06-2 BCA ¶ 33,396. If a TQSE allowance is authorized, the FTR provides that, under the actual expense method of TQSE reimbursement, the agency will pay the actual TQSE incurred provided the expenses are reasonable and do not exceed the maximum allowable amount. 41 CFR 302.6-100.

The maximum allowable amount is the actual daily amount multiplied by the number of authorized TQSE days. The actual daily amount for Mr. Rivenburg was the applicable per diem rate and, for his wife, seventy-five percent of the applicable per diem rate for the first thirty days. Additional days are reimbursed at a reduced percentage of the applicable per diem rate. 41 CFR 302-6.100; *Kenneth R. Wheeler, Jr.*, GSBCA 16630-RELO, 05-2 BCA ¶ 33,054. The applicable per diem rate is the standard CONUS (continental United States) rate, which, at the relevant time, was \$99. 41 CFR 302-6.102; JTR C5360, C5372-A.2.a. The JTR expressly state that expenses exceeding the total authorized TQSE amount are the financial responsibility of the employee. JTR C5370C.

Pursuant to the foregoing, Mr. Rivenburg's claim must be denied. Any reimbursement for expenses must be in accordance with the applicable statutes and regulations. There is no authority for the Air Force or the Board to increase the amount of reimbursable TQSE incurred in connection with a PCS. *Stacey D. Williams-Kleinert*, GSBCA 16566-RELO, 05-1 BCA ¶ 32,961. Even though the agency may have provided incorrect or ambiguous advice concerning available benefits, the agency is not bound by the erroneous advice or actions of its employees. *Richard P. Crane*, GSBCA 15782-RELO, 02-2 BCA ¶ 31,996. Therefore, with the exception of the errors noted in the agency's response to the claim, the agency correctly computed the reimbursement for Mr. Rivenburg.

Decision

The agency should reimburse Mr. Rivenburg for the amount due as a result of the errors in the original computation. The claim is otherwise denied.

EILEEN P. FENNESSY
Board Judge