UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 4, 2013

CBCA 2904-RELO

In the Matter of LYNN A. WARD

Lynn A. Ward, Las Vegas, NV, Claimant.

Amy Noble, Supervisory Human Resources Specialist, Department of the Air Force, Royal Air Force Mildenhall, UK, appearing for Department of the Air Force.

SOMERS, Board Judge.

Background

On March 28, 2012, Lynn Ward, an auditor with the Department of the Air Force, received orders transferring her from the area audit office at Royal Air Force (RAF) Lakenheath, United Kingdom (UK), to Nellis Air Force Base, Nevada.

On May 1, 2012, Ms. Ward asked the Air Force Civilian Personnel Office (Air Force or CPO) about the per diem rates for outgoing temporary quarters subsistence allowance (TQSA) and whether the rates distinguished between the costs of lodging and meals. CPO advised Ms. Ward that the maximum per diem entitlement would be $548.25 per day for her family of four. In order to be reimbursed, Ms. Ward would be required to provide receipts for lodging and food purchases. CPO would only reimburse reasonable expenses based upon CPO's knowledge of the available facilities in the local area.

Ms. Ward proceeded to reserve what is described as a villa at a local holiday resort near RAF Lakenheath, UK, for a total of four separate bookings over a thirty-five-day time period, starting on May 29, 2012. On May 9, 2012, Ms. Ward informally presented CPO

with an invoice reflecting charges to her government credit card for the lodging, which apparently she prepaid. The invoice totaled approximately $12,000, which, as CPO calculated, resulted in a cost per night of $353, based upon the maximum thirty-day reimbursement allowed under the TQSA regulations. At this time, she had not filed an application for TQSA.

On May 10, 2012, CPO told Ms. Ward that the office would only reimburse her for $205 per day, which was the maximum amount paid to any other employee. CPO determined that her proposed lodging exceeded the necessary and reasonable test contemplated by the applicable regulations. CPO reached this conclusion after conducting an audit of all other TQSA claims paid during the same fiscal year to determine the average cost of similar size families. CPO found that the average cost of quarters for a similarly situated family was $111 per night, with the average for all TQSA claims for that fiscal year at $56 per night. In addition, CPO reiterated that TQSA was only authorized for a maximum of thirty days. Because the proposed lodging exceeded the maximum reimbursement, CPO suggested that Ms. Ward cancel her reservations and find other lodging. CPO informed Ms. Ward that it had coordinated with Headquarters United States Air Force Europe (USAFE), which concurred with the decision. Accordingly, CPO told Ms. Ward that the decision was final and provided her with an appeal procedure in the event she wished to appeal the decision.[1]

Ms. Ward attempted to cancel the reservations. However, the contract Ms. Ward signed required her to cancel the reservations within a certain period of time. Initially, based upon the terms of their contract and because Ms. Ward attempted to cancel the reservations too late, the resort refused to refund the lodging fees. Later, the resort authorized a partial refund for the weeks for which the resort could re-sell.

On June 2, 2012, Ms. Ward submitted an application for TQSA, claiming an advance payment of $9300, which the Air Force approved and paid. On June 7, 2012, CPO presented

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[1] The agency incorrectly informed Ms. Ward that she should appeal to the Office of Personnel Management (OPM). However, this Board is responsible for resolving claims of this nature, as determined in the case of *Michael J. Krell*, GSBCA 13710-RELO, 98-2 BCA ¶ 30,050. In that case, one of our predecessor Boards, the General Services Board of Contract Appeals (GSBCA), initially dismissed Mr. Krell's case and transferred it to OPM for resolution. "After reviewing the file, OPM took the position that although authorized under chapter 59 [of title 5 of the United States Code], TQSA is more comparable to reimbursement of a relocation expense than to an allowance. Consequently, OPM declined to consider Mr. Krell's claim and returned this matter to the [GSBCA]." *Krell*, 98-2 at 148,661, n.1.

Ms. Ward a worksheet for the TQSA. This form set forth a maximum reimbursable cost of $205 for each night of lodging and $105 per day for food expenses. CPO advised Ms. Ward that regulations required her to submit the document, together with the receipts for lodging and items claimed, and to certify the accuracy of the costs, to support her claim. Despite the fact that Ms. Ward had received an advance payment, reimbursement would be limited to the actual expenses incurred up to the maximums.

On June 28, 2012, Ms. Ward and her family left for the United States without out-processing and without providing any lodging receipts or other documentation necessary for reimbursement. CPO conducted an investigation, and determined that Ms. Ward and her family occupied the holiday resort for one week, left the area on vacation for a week, and stayed at base lodging for two weeks.[2]

On July 6, 2012, Ms. Ward contacted CPO and stated that she had not yet received her advance payment of $9300. Ms. Ward indicated that she would not be providing any evidence of actual expenses, because she intended to appeal the final decision. Later, Ms. Ward did receive the advance, only to have the money recouped from her pay.

Ms. Ward appeals CPO's and USAFE's final decisions limiting her TQSA expenses. Ms. Ward argues that the CPO's decision is based on Air Force regulations which are not consistent with the Department of State Standardized Regulations (DSSR). Ms. Ward also contends that she is entitled to TQSA during the time that her family took vacation. The agency disagrees with Ms. Ward's arguments, but states that, in any event, the agency has taken no action on Ms. Ward's account due to her failure to complete the required forms and to submit receipts.[3]

Discussion

By statute, TQSA is intended to pay for reasonable subsistence expenses of an employee and immediate family members while occupying temporary quarters when relocating to or from an overseas location. 5 U.S.C. §§ 5921-5928 (2006). This statutory provision is implemented in the DSSR. The Department of Defense's Joint Travel Regulations (JTR) expressly provide that the Department follows the TQSA rules established

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[2] On September 5, 2012, the resort informed the Air Force commander at RAF Lakenheath that Ms. Ward had canceled the credit card payments for the resort lodging.

[3] In her claim before the Board, Ms. Ward initially sought $11,146.96 for expenses incurred for lodging, meals, laundry, and dry cleaning for thirty days. She later reduced her claim to $7520.06.

in the DSSR. JTR C1255. *See generally William P. McBee, Jr.*, CBCA 943-RELO, 08-1 BCA ¶ 33,760; *Krell*.

Section 121 of the DSSR defines TQSA, in pertinent part, as "an allowance granted to an employee for the reasonable cost of temporary quarters, meals and laundry expenses incurred by the employee and/or family members . . . for a period not to exceed 30 days immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters." Section 122 explains that the allowance is intended to "assist in covering the average cost of adequate but not elaborate or unnecessarily expensive accommodations in a hotel, pension, or other transient-type quarters at the post of assignment, plus reasonable meal and laundry expenses" for brief periods after arrival at a new post in an overseas area and for the period immediately preceding departure from an overseas assignment if it is necessary to vacate permanent quarters.

The DSSR addresses how TQSA is reimbursed when an employee departs an overseas assignment for the United States. Section 124 states that the amount which may be reimbursed shall be the lesser of either the actual amount of allowable expenses incurred by the employee and family members or an amount computed based on percentages of the applicable per diem rate for the foreign post. Section 125 governs determination of the rate at which TQSA may be granted, providing that the allowance shall be the "total amount of the reasonable and necessary expenses for the employee and family members for meals, including tax, service charges and tips, laundry/dry cleaning and temporary lodging . . . or the total of the maximum rates for such period . . . whichever is less." This provision further cautions that "[o]nly actual subsistence expenses incurred, which are reasonable in amount and incident to the occupancy of the temporary quarters, shall be reimbursed." Receipts are required for lodging and laundry expenses; meal expenses are to be supported by a certified statement of the employee showing "a per meal per day cost."

In this case, the agency points out that it has not yet had the opportunity to evaluate Ms. Ward's actual expenses, nor has it made a determination about the amount to which she might be entitled to receive. This is because Ms. Ward has never submitted a signed expense worksheet or invoices to CPO for consideration. The only signed expense worksheet and assorted vouchers are the ones that Ms. Ward submitted to the Board in her reply submission.

In our view, Ms. Ward has yet to submit her claim to the agency. The issue that she has presented for our consideration, i.e., whether the agency has the discretion to limit her TQSA reimbursement to something less than the maximum per diem rate, is easily answered. As noted in *Krell*, as well as in Comptroller General decisions, the granting of the various allowances authorized by the Overseas Differentials and Allowances Act is a discretionary matter. *See* 41 CFR 302-3.101, tbl. B, col. 2, item 1(b) (2011); *Charles E. Brookshire*,

B-196809 (May 9, 1980). Thus, the agency can properly limit TQSA reimbursement when it adjudicates a claim. In addition, to the extent that Ms. Ward may be seeking TQSA for times on which she was on vacation, we have held that employees on annual leave are not eligible for TQSA. *See Richard H. Whittier*, GSBCA 16538-RELO, 05-1 BCA ¶ 32,926, at 163,103 (citing *Elmer L. Grafford*, GSBCA 14176-RELO, 98-1 BCA ¶ 29,700).

Here, however, no claim has actually been presented to the agency for action. Accordingly, this matter is not yet ripe for this Board's review under our own rules. Specifically, Board Rule 401 (48 CFR 6104.401) states in relevant part:

> (c) Review of claims. Any claim for entitlement to travel or relocation expenses must first be filed with the claimant's own department or agency (the agency). The agency shall initially adjudicate the claim. A claimant disagreeing with the agency's determination may request review of the claim by the Board.

The rule requires that a claim must first be filed with the agency. As the agency notes, Ms. Ward has yet to file a claim with the agency. The agency's determination that it would limit her reimbursement to a specific amount, while final, is not an adjudication of an actual claim, but rather a prediction as to future action. In the absence of the actual presentation of a claim before the agency and an agency determination from which to appeal, the Board has nothing further to review. The agency properly concluded that reimbursement could not exceed a reasonable rate for at most thirty days of actual expenses. At this point the claimant has demonstrated zero entitlement.

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JERI KAYLENE SOMERS
Board Judge