



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 21, 2014

CBCA 3827-TRAV

In the Matter of PAUL F. MLAKAR

Paul F. Mlakar, Vicksburg, MS, Claimant.

Sylvia Shawver, Chief, Audit Support Office, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

STERN, Board Judge.

Claimant was assigned by his employing agency, the United States Army Corps of Engineers (Army), temporary duty travel (TDY) from his permanent duty station at Vicksburg, Mississippi, to West Point, New York, on the separate occasions of August 11 to August 18, 2013; August 27 to September 6, 2013; and September 11 to September 23, 2013. While on TDY claimant stayed in an apartment that he had been renting since June 23, 2010. Claimant submitted vouchers for lodging at the locality rate established by the General Services Administration (GSA) plus a voucher for internet connection fees.

The Army paid claimant for his TDY lodging based on a rate computed by dividing the monthly rent he paid by the number of days in the month. Based on claimant's monthly rental fee of \$1800, the Army has computed this rate at \$58.07 per day for August (a month of thirty-one days), and \$60 per day for September (a month of thirty days). The total paid by the Army for these trips was \$1589.49. Upon review, the Army now seeks a return of all amounts it paid claimant for lodging. The Army submits that the apartment was not rented for the TDY but rather was an apartment that claimant had been renting for several years. Claimant states that the apartment was only used for business and not as a personal residence. Claimant used the apartment only for other assignments to West Point, as part of a part-time sabbatical assignment as the "Class of 1953 Distinguished Chair in Civil Engineering." The

West Point Association of Graduates reimbursed claimant directly for his travel through May 2013. The Army changed his travel to TDY travel after May 2013.

Generally, federal employees on TDY are entitled to be paid a per diem allowance which includes a rate for lodging established by GSA. The Federal Travel Regulation (FTR) provides that when lodging, including rental of an apartment, is obtained on a long-term basis the

daily lodging rate is computed by dividing the total lodging cost by the number of days of occupancy for which you are entitled to per diem, provided the cost does not exceed the daily rate of conventional lodging. Otherwise the daily lodging cost is computed by dividing the total lodging cost by the number of days in the rental period.

41 CFR 301-11.14 (2012).

The daily lodging cost for an apartment rented on a long-term basis includes not only the rent, but also special user fees which are ordinarily included in the price of a hotel or motel room in the area concerned. 41 CFR 301-11.15(a), (e). These special user fees include internet connection fees. Reimbursement for the lodging cost may not exceed the maximum rate established by GSA. *Id.* 301-11.14.

Here, claimant rented the apartment commencing in 2010. Claimant's TDY commenced in 2013. In accordance with the regulations, claimant is entitled to be reimbursed the proportion of the apartment rental fee for the time of his TDY, not to exceed the daily lodging rate established by GSA. Since no evidence has been presented that hotels in the West Point area include internet connection fees, claimant is not entitled to include these fees in his lodging cost.

Decision

Claimant is entitled to be paid the appropriate share of his monthly rental expense while on TDY at West Point. The Army is not entitled to a reimbursement of amounts previously paid claimant in accordance with this formula.

JAMES L. STERN
Board Judge

