



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 27, 2015

CBCA 4536-RELO

In the Matter of RICHARD S. PAK

Richard S. Pak, Fairfax, VA, Claimant.

Kristina Letcher, Area II Labor Law Attorney, Department of the Army, APO Area Pacific, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

When regulations speak of “the date of the arrival of [a transferred] employee at the new post,” do they refer to the date on which the employee arrives in the environs of his new post or the date on which he actually reports for work at that post? We hold that the latter date is the one to which the regulations pertain.

Background

The Department of the Army issued orders to Richard S. Pak in December 2014, transferring him from Seoul, Korea, to Fort Belvoir, Virginia. The orders contained this line: “Individual/son/spouse authorized up to 10 days TQSA [temporary quarters subsistence allowance]. Spouse authorized up to an additional 7 days TQSA (delayed travel).”

Mr. Pak and his family moved into temporary quarters in Korea on December 24, 2014. He and his son left Korea on January 3, 2015. Upon their arrival in the United States, he and his son stayed in temporary quarters in Virginia, near Fort Belvoir, and Mr. Pak went on leave status. He reported for duty at Fort Belvoir on January 12, as directed. His wife remained in Korea until January 8, when she traveled to an alternate location in the United States on assignment with another Department of Defense agency.

The Army has paid Mr. Pak TQSA for the time during which he, his wife, and his son were in temporary quarters in Korea. Before leaving that country, he and his supervisor there made great efforts to ensure that he would also receive TQSA for the five days his wife remained in Korea, as authorized in his orders. His command refused to make that payment, suggesting that he might request it from his command at Fort Belvoir. Mr. Pak chose to ask the Board to review the determination he had received.

Discussion

The Overseas Differentials and Allowances Act authorizes agencies to pay to employees who are stationed abroad but not provided government quarters without charge “[a] temporary subsistence allowance for the reasonable cost of temporary quarters (including meals and laundry expenses) incurred by the employee and his family . . . for a period of not more than 30 days immediately before final departure from the post after the necessary evacuation of residence quarters.” 5 U.S.C. § 5923(a)(1)(B) (2012).

The authority to issue regulations implementing this Act has been delegated by the President to the Secretary of State. Exec. Order No. 10,903, § 1, *reprinted as amended in* 5 U.S.C. § 5921 app. at 572-73. The Secretary of State has exercised this authority by promulgating sections 120 through 129 of the Department of State Standardized Regulations (DSSR), which label the allowance provided by statute as TQSA. The Department of Defense’s Joint Travel Regulations (JTR) expressly provide that for its civilian employees in foreign areas, the DSSR governs. JTR Intro. at B.3.c(1). *See generally William P. McBee, Jr.*, CBCA 943-RELO, 08-1 BCA ¶ 33,760; *Richard H. Whittier*, GSBCA 16538-RELO, 05-1 BCA ¶ 32,926.

The DSSR provides that “[a TQSA] granted immediately preceding the employee’s final departure from the post [abroad] shall terminate as of the earliest of the following [four] dates.” DSSR 124.2. The one of these dates which is relevant to this case is “the date of the employee’s departure, or the date of departure of family members if later, under transfer orders. *Where the employee’s departure for transfer precedes that of family members, the [TQSA] at the previous post shall not extend beyond the date preceding the date of the arrival of the new employee at the new post.*” *Id.* 124.2(c) (emphasis added).

The Army maintains that pursuant to this DSSR provision, Mr. Pak’s eligibility for TQSA terminated on January 3, when he arrived in the area of Fort Belvoir. According to the agency, its position is supported by the Board’s decision in *Richard J. Maillet*, CBCA 3840-RELO, 15-1 BCA ¶ 35,825 (2014). Mr. Pak contends that because he did not arrive at Fort Belvoir to begin his new assignment until January 12, his eligibility for TQSA was

unaffected by his arrival date; it expired instead, under DSSR 124.2(b), on January 8, when his wife ceased occupying temporary quarters in Korea.

We hold that Mr. Pak's understanding is correct. A "post," as that term is used in the DSSR, "means the place designated as the official station of the employee." DSSR 040.h. It is a duty location, not a general geographic area. Thus, Mr. Pak did not arrive at his new post of Fort Belvoir until his leave period ended and he reported for work. The Federal Travel Regulation's stipulation that a transferred employee's "entitlements and allowances for relocation are determined by the regulatory provisions that are in effect at the time [the employee] report[s] for duty at [his] new official station," 41 CFR 302-2.3 (2014), is consistent with this understanding. *Maillet* is not to the contrary. There, we held that a transferred employee may not have his entitlement to TQSA at his old overseas duty post extended, even for family members remaining abroad, after he reports for duty at his new United States post. Mr. Pak's situation was different from Mr. Maillet's: he was authorized TQSA for his wife at his old overseas post after he had left and *before* he reported for duty at his new United States post.

We note that the Army has contended that Mr. Pak's request that we review the agency's determination is premature, since he never asked his new command to pay the TQSA he sought for the last five days his wife remained in Korea. Unlike the situation in *Lynn A. Ward*, CBCA 2904-RELO, 13 BCA ¶ 35,276, cited by the Army, Mr. Pak submitted a claim to the agency and received a determination that it could not be paid. He met the requirements, established in our Rule 401 (48 CFR 6104.401) that a "claim for entitlement to . . . relocation expenses must first be filed with the claimant's own department or agency," and that after the agency adjudicates the claim, "[a] claimant disagreeing with the agency's determination may request review of the claim by the Board." Asking an employee whose claim has been denied to resubmit the claim to other offices within an agency does not prevent an employee from seeking our review of the denial.

Decision

The Army shall pay to Mr. Pak the appropriate amount of TQSA for the five days that his wife remained in Korea, as authorized in his orders, after he left that country.

STEPHEN M. DANIELS
Board Judge