



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 3, 2015

CBCA 4755-RELO

In the Matter of ROBBIE L. SWINT, JR.

Robbie L. Swint, Jr., Spring Lake, NC, Claimant.

Thomas E. Spahr, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

GOODMAN, Board Judge.

Claimant, Robbie L. Swint, Jr., files this claim with regard to his position as a civilian employee of the Department of Defense. He has asked this Board to review the agency's partial denial of his claim for temporary quarters subsistence expenses (TQSE) incurred during a permanent change of station (PCS). Alternatively, if we find that the partial denial was proper, he requests waiver of the debt of the balance of his travel advance.

Factual Background

On January 10, 2014, the agency issued claimant orders for a PCS from Maxwell Air Force Base, Alabama, to his new permanent duty station (PDS), Fort Stewart, Georgia. Claimant was authorized thirty days of TQSE and he received \$9868 as a travel advance.

Claimant's father died on January 17, 2014. Claimant and his dependents arrived at the new PDS on February 2, 2014, and entered into TQSE on February 3, 2014, for five days. Because of his father's recent death and his mother's ill health, claimant requested and was granted sick leave. He and his dependents then went to stay with his mother in Daleville,

Alabama, 283 miles from his new PDS. Claimant remained on sick leave for the period of time he stayed at his mother's home. He and his dependents did not return to the new PDS.¹

In June 2014 claimant filed a claim for TQSE. He sought reimbursement for lodging and meals for himself and his dependents for the days during which he resided at his new PDS. During the twenty-one days he and his dependents resided with his mother, February 8 through February 28, 2014, claimant sought reimbursement for meals for himself and his dependents. The agency granted claimant's request for reimbursement for the expenses incurred during the five days at the new PDS. The agency denied reimbursement for meals while claimant and his dependents resided with his mother, as TQSE could not be allowed because the location of claimant's mother's home was not within reasonable proximity of the old or new PDS. The agency also noted that claimant was on sick leave, which would cause the running of the TQSE period to toll.

The agency report states that claimant was reimbursed \$1478.75 for the expenses incurred at the new PDS, and this amount was applied toward the travel advance, leaving a balance of \$8389.25 still owed. However, claimant has submitted evidence indicating the claim was reviewed again, and he was reimbursed an additional \$75.76 which was also applied to the travel advance, leaving a balance of \$8313.49 still owed.

Claimant requests reimbursement for the portion of the claim denied by the agency—meals for himself and his dependents while residing at his mother's home. If the Board finds the agency's denial proper, claimant requests that he be granted a waiver of the debt of the balance of the travel advance.

Discussion

The purpose of TQSE is to reimburse transferred employees reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters incident to a transfer. *See, e.g., Stephen J. Collier*, CBCA 4395-RELO, 15-1 BCA ¶ 35,979; *Zenaida Canaba*, CBCA 3993-RELO, 15-1 BCA ¶ 35,958. By statute, 5 U.S.C. § 5724a(c) (2012), federal agencies are authorized to pay the subsistence expenses of a transferring employee who is occupying temporary quarters incident to a transfer in the interest of the Government for a period of up to sixty days, and may reimburse such expenses for up to an additional sixty days if the designated agency official determines there are compelling reasons for the continued occupancy of temporary quarters.

¹ Claimant's submission to this Board describes the reasons why he did not return to the new PDS.

The TQSE period normally runs on consecutive days unless there is a specified interruption, as defined in Federal Travel Regulation (FTR) 302-6.106 (41 CFR 302-6.106 (2013)), which reads in relevant part:

May I interrupt occupancy of temporary quarters?

Yes, your authorized period for claiming actual TQSE reimbursement is measured on consecutive days, and once begun, normally continues to run whether or not you occupy temporary quarters. You may, however, interrupt your authorized period for claiming actual TQSE reimbursement in the following circumstances:

....

(c) For a non-official necessary interruption such as . . . approved sick leave, or other reason beyond your control and acceptable to the agency.

The location where an employee may occupy temporary quarters is set forth in FTR 302-6.9, which states:

Where may I/we occupy temporary quarters at Government expense?

You and/or your immediate family may occupy temporary quarters at Government expense within reasonable proximity of your old and/or new official stations. Neither you nor your immediate family may be reimbursed for occupying temporary quarters at any other location, unless justified by special circumstances that are reasonably related to your transfer.

Based on the requirements of these regulations, the agency denied reimbursement of meals claimed by claimant for himself and his family while staying with his mother, almost 300 miles from his new PDS. The agency determined that claimant was not occupying quarters within reasonable proximity to his old or new duty station, nor was the location justified by special circumstances reasonably related to his transfer. Additionally, the agency believed that the TQSE period was tolled as claimant was on sick leave.

In his submission to this Board, claimant states:

I fully understand that TQSE is not authorized to anyone during leave and it is not authorized for an alternate location. However, I am requesting the

Board to reconsider my TQSE for approval due to my circumstances and situations. . . . I believe the information I have provided is sufficient for an approval.

Claimant has submitted details and supporting documentation of difficult personal circumstances, in addition to his father's death and mother's health, in support of his request. We have fully considered these circumstances, but we cannot grant the relief claimant seeks.

Claimant's mother's home was not in reasonable proximity of his new duty station, nor can the difficult circumstances which resulted in claimant and his family moving to his mother's home be deemed special circumstances reasonably related to his transfer, even though these circumstances occurred during the period in which claimant planned to be at the new duty station in temporary quarters. Claimant is therefore not entitled, by law or regulation, to reimbursement for expenses incurred while staying with his mother.

As the agency notes, FTR 302-6.106 allows the employee to toll the normal running of the TQSE period on consecutive days if circumstances occur that are deemed a non-official necessary interruption. While claimant is not entitled to TQSE for the period spent at his mother's home because the location was not in reasonable proximity of the new PDS, the fact that he was on sick leave at that time, in addition to the other circumstances he describes, are non-official interruptions and result in tolling his TQSE period for the days away from the new PDS. *See, e.g., Steven L. Meints*, CBCA 898-RELO, 08-1 BCA ¶ 33,728 (2007). As claimant was only at the new PDS for five days before leaving to stay with his mother, he had twenty-five days remaining of his authorized thirty-day TQSE period if he had returned to his new PDS. As he did not return to his new PDS, there is no further entitlement to TQSE expenses, and claimant therefore owes the balance of his travel advance.

This Board does not have the authority to waive claimant's debt of the balance of the travel advance, as the authority to waive a debt belongs to the head of the agency from which the debt arose. *Evan F. Meltzer*, CBCA 1536-RELO, 09-2 BCA ¶ 34,272; *Sam Hankins*, CBCA 1309-RELO, 09-1 BCA ¶ 34,124.²

² The agency report to this Board instructs claimant how to submit his waiver request to the agency.

Decision

The agency properly denied the claim for reimbursement of TQSE expenses for meals incurred while claimant and his family stayed at his mother's home. This Board has no authority to waive the debt of the balance of the travel advance.

ALLAN H. GOODMAN
Board Judge