UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 23, 2015

CBCA 4029-RELO

In the Matter of MIRIAM E. BOLAFFI

Miriam E. Bolaffi, Singapore, Claimant.

Teesha R. Huggins, Chief, Labor/Employee Relations & Services Division, Human Resources Office, Navy Region Japan, Department of the Navy, FPO Area Pacific, appearing for Department of the Navy.

LESTER, Board Judge.

Effective May 18, 2014, the Department of the Navy (Navy) transferred Miriam E. Bolaffi from the Military Sealift Command (MSC) Headquarters in Washington, D.C., to the MSC's Ship Support Unit in Singapore for a three-year tour. Ms. Bolaffi was authorized a temporary quarters subsistence allowance (TQSA) for her lodging, meals, and laundry expenses until her permanent living quarters in Singapore were available.

Ms. Bolaffi challenges the Navy's decision to deny her TQSA reimbursement for two "complimentary" nights of lodging that the hotel at which she stayed offered as part of a special rate package. She also challenges the Navy's failure to reimburse her for the full extent of meals that she claimed as part of her TQSA.

In addition to her TQSA claims, Ms. Bolaffi asks us to order the agency to reimburse her for property management (PM) services that she is paying to assist in the rental of her personal residence in the United States while she is in Singapore. She asserts that the agency

originally informed her that she was entitled to PM services reimbursement, but subsequently changed its mind.

For the reasons set forth below, we grant Ms. Bolaffi's request for reimbursement for her lodging expenses, but deny her requests for increased meals reimbursement and for reimbursement of expenses associated with PM services.

Discussion

I. Ms. Bolaffi's Lodging and Meals Reimbursements

A. General Requirements for TQSA Reimbursements

"Congress has authorized agencies to pay a TQSA to employees in foreign areas who live in temporary quarters and are not provided Government owned or rented quarters without charge. The TQSA is to cover the reasonable cost of lodging, meals, and laundry expenses incurred by an employee and his or her family." *Okyon Kim Ybarra*, GSBCA 15407-RELO, 01-1 BCA ¶ 31,334, at 154,762; *see* 5 U.S.C. § 5923(a)(1) (2012) (providing for "[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 up to ninety days after their first arrival at a new foreign post).

"The President has delegated to the Secretary of State authority to issue regulations which implement statutes providing for overseas pay differentials and allowances, including TQSA." *Ybarra*, 01-1 BCA at 154,762; *see* Exec. Order No. 10,903, § 2, *reprinted as amended in* 5 U.S.C. § 5921 app. Those regulations are set forth in the Department of State Standardized Regulations (DSSR), which "have the force and effect of law." *Gordon D. Giffin*, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100, at 148,955.

Under DSSR 123.31(a), the employee is entitled during her first thirty days at a new foreign post to recover "a daily rate not in excess of 75% of the per diem rate listed for the foreign post in Section 925 of the Standardized Regulations (Government Civilians, Foreign Areas)." The employee, however, is not automatically entitled to recover the maximum daily lodging and meal amounts, but can only be reimbursed the "actual subsistence expenses incurred, which are reasonable in amount and incident to the occupancy of temporary quarters." DSSR 125. "The rate at which the [TQSA] may be granted shall be the total amount of the reasonable and necessary expenses for the employee and family members for meals . . . , laundry/dry cleaning and temporary lodging . . . or the total of the maximum rates for such period or periods, whichever is less." *Id.* (emphasis added); *see* DSSR 123.3 ("amount of [TQSA] which may be reimbursed shall be the lesser of either the actual amount

of allowable expenses incurred by the employee" or the maximum permissible percentage of applicable per diem).

"The DSSR is very specific as to documentation necessary to prove that an expense was actually incurred." *Ybarra*, 01-1 BCA at 154,763. For temporary lodging, "[s]upporting receipts or other appropriate documentation for the daily cost" is required. DSSR 125. However, "[e]vidence of the daily cost of meals, laundry and dry cleaning shall be a certified statement by the employee." *Id.*[1]

B. Ms. Bolaffi's Request for Lodging Reimbursement

The applicable maximum daily per diem for lodging in Singapore during the period in question, established by the Defense Travel Management Office (DTMO), was $309. Pursuant to DSSR 123.31(a), Ms. Bolaffi was authorized a daily lodging rate not in excess of seventy-five percent of that amount, which equates to $231.75.

For the first twenty-eight days after she arrived in Singapore (from May 18 through June 14, 2014), the period for which she claims TSQA, Ms. Bolaffi obtained a special extended stay package, which included a room upgrade.[2] The daily rate for Ms. Bolaffi's extended stay package, with the room upgrade, exceeded the $231.75 authorized amount by $33.53. However, by electing the room upgrade package, two of the twenty-eight nights became "complimentary" (with the hotel charging only minimal lodging fees on those nights).

The Navy reimbursed Ms. Bolaffi the maximum permissible amount of $231.75 for each of the twenty-six nights that she was affirmatively charged for her room, but it refused to pay any monies, other than to compensate for the minimal fees charged, for the two complimentary nights. The agency explains that DSSR 121 defines TQSA as "an allowance

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[1] An earlier version of DSSR 125, discussed in *Ybarra*, required the employee to provide supporting receipts or other appropriate documentation for the daily cost of both "temporary lodging and laundry/dry cleaning," permitting a certified statement only for the daily cost of meals. The current version of DSSR 125, last updated August 30, 2009, changes the laundry and dry cleaning reimbursement requirement, providing for a certified statement in lieu of supporting receipts.

[2] Ms. Bolaffi also stayed at the hotel for two extra days, on June 15 and 16, 2014, after her entitlement to TQSA ended, but she is not seeking compensation for those days in this action. In this decision, we address only the twenty-eight days to which she contends she is entitled to TQSA reimbursement.

for the reasonable cost of temporary quarters incurred by the employee." (Emphasis added.) It asserts that Ms. Bolaffi did not "incur" $231.75 in costs on either of the two "complimentary" nights and that she is therefore not entitled to recover anything beyond whatever minimal fees the hotel charged those nights. Ms. Bolaffi challenges the agency's decision, seeking to recover $463.50 to cover the costs of the two "complimentary" nights that she obtained through her extended stay upgrade package.

The Navy's method of calculating reimbursable TQSA by evaluating room charges on a day-by-day basis directly conflicts with the DSSR. Those regulations provide that the "daily actual expenses for temporary lodging, meals . . . , laundry and cleaning of clothing will be totaled for each 30 day period to permit a comparison with the maximum amount for each specified period." DSSR 125. "If less than a 30 day period is authorized, or used, the maximum allowable amount will be based on the number of days authorized, or used, multiplied by the applicable daily rate." *Id.* The agency's actions in reimbursing Ms. Bolaffi for her lodging costs on a day-by-day basis, rather than by identifying the total permissible lodging cost for the twenty-eight-day period during which Ms. Bolaffi used TQSA and comparing it to the total lodging costs for that twenty-eight-day period, violates this DSSR requirement, as we recently explained when the Navy employed the same method of TQSA reimbursement in another case:

> [The claimant] . . . complains that the agency evaluated her TQSA voucher on a day-by-day basis, rather than over a thirty-day period, and thereby refused to make payment in an amount above the daily rate for each of the few days on which she incurred greater expenses . . . . As she points out, DSSR 125 contemplates that all documented expenses for a thirty-day period (or lesser period, if that is all that is authorized) are to be compared to the daily rate times the number of days in the period, and the lesser of the two totals is to be paid to the employee.

Annette M. Zapf, CBCA 4231-RELO, slip op. at 4 (Mar. 18, 2015). Properly calculating her lodging expenses, Ms. Bolaffi is entitled to payment of an additional $463.50 beyond the lodging costs that the Navy previously approved, less any reimbursement for the minimal fees charged for the two "complimentary" nights that the Navy has already paid.[3]

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[3] The record does not reflect whether the agency has already paid Ms. Bolaffi for the minimal lodging fees charged on the two complimentary hotel nights. To the extent that it has, the agency must reduce its $463.50 payment to account for the amounts that has already been paid for those two nights.

Even if the Navy could have considered lodging costs on a day-by-day basis, Ms. Bolaffi would still be entitled to her $463.50 reimbursement. Contrary to the Navy's assertions, the nights were not free. Ms. Bolaffi paid for an extended stay room upgrade package that included, as an incentive, the two "complimentary" nights. To obtain that package, including the two complimentary nights, she had to pay increased fees that resulted in more than $800 in unreimbursed costs over the course of the twenty-eight days of lodging for which the Government is responsible. It was only because of Ms. Bolaffi's payment of these additional, and unreimbursed, costs that she obtained the two "complimentary" nights. The Comptroller General considered a comparable situation when examining the recoverability of expenses necessary for employees to obtain a special travel airfare. In that case, 54 Comp. Gen. 268 (1974), two agency employees had traveled on official business roundtrip from Michigan to California, but had stopped and stayed over in Colorado for two days of annual leave on the way to California. The employees had obtained a special "tour-basing" package that allowed them to stop in Colorado at a cost of almost $100 less than the regular direct airfare would have been had they traveled directly from Michigan to California, but that required them to purchase a minimum of $65 in accommodations. The $65 charge was recoverable as part of the employees' airfare expense. It was "an inseparable part of the overall cost of the special 'package' tour," one that did not result in any additional expense to the Government and, in fact, reduced the Government's overall costs, making the special package rate "advantageous to the Government." In the current situation, even if the agency could have evaluated Ms. Bolaffi's lodging costs on a day-by-day basis, it would be unfair for the Government to take advantage of the benefit of complimentary hotel nights that Ms. Bolaffi obtained through her package deal while, simultaneously, imposing on her the costs necessary for her to obtain that benefit. *See Lorrie L. Wood*, GSBCA 13705-TRAV, 97-1 BCA ¶ 28,707, at 143,328 (1996) ("if the employee derives the benefit of free lodging . . . as part of a package deal which includes the lower fare, the Government may not force the employee to pay for this benefit"). In the circumstances here, Ms. Bolaffi would be entitled to recover her previously unreimbursed costs, not to exceed the recoverable lodging amounts ($231.75 per night) that she would have incurred and for which she would have been reimbursed had she not obtained the special deal.

C. Ms. Bolaffi's Request for Meals Reimbursement

The applicable maximum daily per diem for meals in Singapore during the period in question was $144. Pursuant to DSSR 123.31(a), Ms. Bolaffi was authorized a daily rate not in excess of seventy-five percent of that amount, or $108 a day.

When she arrived in Singapore, Ms. Bolaffi was instructed to keep receipts for all of her meals. For the period from May 18 through June 14, 2014, Ms. Bolaffi was permitted to claim a total of eighty-four meal expenses (three meals a day for twenty-eight days) as

TQSA. When she submitted her reimbursement request for those eighty-four meals, she submitted fifteen receipts, but claimed that others had been lost. Along with the receipts, she submitted a certified statement identifying the specific costs that she incurred for thirty-three meals. For each of the remaining fifty-one meals, for which she did not know or remember the specific meal costs incurred, she claimed fourteen Singapore dollars for breakfast, twenty-four Singapore dollars for lunch, or forty-nine Singapore dollars for dinner, based upon her averaging of her known costs from other meals.

The agency denied her reimbursement request in part, explaining that only fifteen receipts supported eighty-four meals. Because Ms. Bolaffi did not provide a sufficient number of receipts, the agency asserted that it was entitled independently to calculate a reimbursement amount that it deemed reasonable, and it calculated a total daily meal rate of $63.25, which it has declined to break down further into specific amounts for breakfast, lunch, and dinner. The agency stated that it would reimburse Ms. Bolaffi $63.25 for each of the twenty-eight days for which Ms. Bolaffi was eligible for TQSA, including for those days for which Ms. Bolaffi had receipts or had certified a specific amount for costs incurred for a meal. Ms. Bolaffi challenges the agency's decision.

As an initial matter, the agency's demand that Ms. Bolaffi, and apparently other employees who transfer to Singapore, be able to support every meal cost with a receipt directly conflicts with DSSR 125, which provides that "[e]vidence of the daily cost of meals . . . shall be a certified statement by the employee." It is true that the Department of Defense (DOD) has issued its own instruction, DOD Instruction 1400.25, Vol. 1250 (Feb. 23, 2012), providing that DOD officials are entitled to require receipts for meals "that they consider extravagant," as follows:

> Officials approving allowance claims may also require receipts for meals claimed under TQSA that they consider extravagant. If an employee fails to submit receipts, allowance payments will be suspended until supporting documentation is submitted. Officials approving allowance claims shall verify that amounts claimed are supported by receipts and will not approve payments that are not supported by documentation.

Id., Enclosure 2, ¶ 7, at 11 (emphasis added). Yet, assuming the enforceability of that language in the DOD instruction,[4] that language is limited to receipts for meal costs

[4] One of our predecessor boards questioned the same language in an earlier version of the DOD instruction, finding the provision "clearly in conflict with the DSSR's rules that (continued...)

considered "extravagant." The meal costs asserted for each day were well below the $108 maximum authorized under DSSR 123.31(a), making it difficult to call them extravagant. It appears from the record that the MSC instead routinely requires employees to submit receipts for all meal costs, which finds no support in either the DSSR or the DOD instruction.

Nevertheless, it is clear that a portion of Ms. Bolaffi's certified statement of her meal costs does not comport with her obligations under the DSSR. Ms. Bolaffi certified that she actually spent specific dollar amounts on thirty-three meals, but she acknowledges that she created a cost estimate, based upon the averaging of the meal costs that she remembered, for the remaining fifty-one meals. Such estimates do not meet the requirements for meal cost certification, for the reasons that one of our predecessor boards explained in *Michael D. Fox*, GSBCA 13712-RELO, 97-2 BCA ¶ 29,217. In that case, the claimant submitted a voucher seeking payment of exactly the same amount – $24.50 – for every meal eaten over a three-week period. In reviewing the agency's denial of recovery for any meal expenses, the board made clear that "reimbursement for subsistence costs incurred during relocation is for actual expenses," not estimates of possible expenses. *Id.* at 145,395 (emphasis added). Although recognizing that a claimant is entitled to justify his expenses through a certified statement, rather than through receipts, the board determined that the information available to the agency made clear that the claimant had not identified in his certified statement the amount of the actual costs that he had specifically incurred. *Id.* The board held that, in such circumstances, the agency was entitled to question, and to decline to pay, claimed costs absent some type of "credible contemporaneous documentation" (either receipts or other documents). *Id.* "In the absence of credible supporting documentation," the board held, "the agency is not obligated to pay a claimant any amount for meal expenses, particularly when claimant could not establish that the expenses were either actually or reasonably incurred." *Id.* (emphasis added); *see Samuel C. Stringer*, 04-2 BCA at 161,904 ("[T]he absence of a requirement for supporting receipts for M&IE does not justify the use of nothing more than

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[4](...continued)
receipts are necessary for reimbursement of only lodging . . . expenses, and that a certified statement from the employee will suffice for reimbursement of meal costs." *Ybarra*, 01-1 BCA at 154,763; *see Samuel C. Stringer*, GSBCA 16369-RELO, 04-2 BCA ¶ 32,731, at 161,904 ("the DSSR requires supporting receipts only for the employee's lodging"). The board recognized that the President has delegated to the Secretary of State, not to DOD, authority to issue regulations providing for overseas pay differentials and allowances, regulations that have the force and effect of law. *See Gregory J. Bird*, GSBCA 16110-RELO, 04-1 BCA ¶ 32,425, at 160,479 (2003); *Ybarra*, 01-1 BCA at 154,763. In light of our discussion below, however, we need not resolve the scope of the Navy's authority to require meal receipts.

broad, generous estimates. It is unmistakably clear from the TQSA worksheet itself that only reimbursement of actual expenses should be sought.").

Ms. Bolaffi's meal estimates are unreliable for the same reasons as those in *Fox* were.[5] Although Ms. Bolaffi seeks fourteen Singapore dollars for breakfast whenever she did not remember the specific cost, her claimed costs for breakfasts for which she has receipts are as low as 6.5 Singapore dollars. She provides no explanation as to why the agency should assume that all of her undocumented breakfasts were, in fact, fourteen Singapore dollars or more. Her certified statement, coupled with her separate explanation of how she developed her meal cost figures, provides no assurance that she actually incurred expenses each day in amounts at the levels represented in her certified statement. "The express limitation of TQSA to actual expenses clearly imposes on an employee the onus of keeping track of actual expenses in a reasonably reliable manner, even if supporting receipts need not be submitted in support of a request for reimbursement." *Stringer*, 04-2 BCA at 161,904. Had it wanted to do so, the agency would have been within its rights in these circumstances to deny Ms. Bolaffi any reimbursement for the fifty-one meals that she acknowledges having estimated. *See id.* ("where there is no credible basis for determining what the actual amounts are that should be paid, the agency is not required to approve any payment at all"); *Donald Mixon*, GSBCA 14957-RELO, 00-1 BCA ¶ 30,606, at 151,117 (1999) (absent credible basis to identify actual costs, "the agency is not required to approve any payment at all").

Nevertheless, the agency did not go to the extreme of paying Ms. Bolaffi nothing for the meals for which she estimated costs. Instead, it created its own internal estimate of what was reasonable, which it is entitled to do. *See Mixon*, 00-1 BCA at 151,117 ("If an agency is inclined to provide some reimbursement under these circumstances, it may, but is not required to, do so on the basis of statistical data that it deems appropriate for the area."); *see also Stringer*, 04-2 BCA at 161,904. The agency paid Ms. Bolaffi that amount for all of her meals (even for those she certified as actual costs incurred). To the extent that Ms. Bolaffi believes that she should have received full payment for the thirty-three actual meal costs that she certified, plus an amount representing the agency's estimate of the remaining fifty-one meal costs, there is no basis for such an argument. Even when an agency is presented with actual receipts, "the granting of the various allowances by the Overseas Differentials and Allowances Act," codified at 5 U.S.C. §§ 5921-5948, "is a discretionary matter," such that

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[5] In *Fox*, the agency believed that the claimant's request bordered on fraud, a situation that does not exist in this case. Ms. Bolaffi quite candidly informed the agency in her TQSA reimbursement request that she was providing estimates of some meal costs because she did not have a record of the actual costs. Nevertheless, an agency need not suspect fraud before it can question meal costs that are plainly estimates.

"the agency can properly limit TQSA reimbursement when it adjudicates a claim." *Lynn A. Ward*, CBCA 2904-RELO, 13 BCA ¶ 35,276, at 173,153 (citing 41 CFR 302-3.101, tbl. B, col. 2, item 1(b) (2011)); *see Michael J. Krell*, GSBCA 13710-RELO, 98-2 BCA ¶ 30,050, at 148,661 ("Expenses in excess of what the agency determines to have been reasonably incurred are not allowable."). The record establishes no error in the agency's estimations. In such circumstances, we must deny Ms. Bolaffi's request for reimbursement of additional meal expenses.

II. Reimbursement for Property Management (PM) Services Fees

Ms. Bolaffi challenges the agency's decision not to reimburse her for PM services relating to the rental of her personal residence in Virginia while she is in Singapore, services that the agency at one point told her it would pay. "PM services are intended to assist an employee manage a residence at the old [Permanent Duty Station (PDS)] as a rental property" while the employee is assigned to work at another location. Joint Travel Regulations (JTR) C5714-D.

In her original orders regarding her three-year tour to Singapore, there is no mention of any authorization for reimbursement of PM services. To support her claim for PM services, Ms. Bolaffi has included in the record an e-mail message dated May 6, 2014, from an MSC Engineering Director indicating that the MSC's Human Resources Board (HRB) had decided that the MSC would offer various relocation entitlements, including PM services for up to a year, "for PCS to Norfolk." Although Ms. Bolaffi was being assigned to Singapore, she believed that she "faced the same issues" as individuals with a PCS to Norfolk "with regards to not being able to sell my property in time to make the PCS move." After she relocated to Singapore, she sent an e-mail message to the MSC's Human Resources Office (HRO) dated June 13, 2014, representing that "[t]he Command here [in Singapore] is in agreement that I should be given the same benefits as other MSC members."

On July 2, 2014, the MSC's HRO notified Ms. Bolaffi by e-mail message that, in mid-June, the HRB had decided that, "from this point forward, property management services would be authorized for employees reporting overseas only for the length of their initial tour." The HRO indicated that it would "draft an amendment to your orders to include property management services beginning July 2014 [rather than May 2014] through the end of your tour [in May 2017]," which it would then forward on to the appropriate office for signature. Subsequently, however, by e-mail message dated July 16, 2014, the HRO informed Ms. Bolaffi that it had made a mistake and that "it has been determined that property management services are not authorized for employees reporting overseas." The HRO stated that "[t]he JTR section that addresses property management services for employees reporting to foreign duty stations (Chapter 5, Part O, C5716) uses the term

'through the Secretarial process'" and that this request did not go through that process. The HRO also indicated that PM services "cannot be authorized after the fact as Relocation Services authorization must be on the original PCS order (JTR, par. C5712-E1)."

On its face, JTR C5716, titled "PM Services Payment for an Employee Transferred to a Foreign PDS," permits employees transferred overseas to receive reimbursement for PM services in certain circumstances:

> A DOD COMPONENT, through the Secretarial process, may authorize PM services payment on behalf of an employee when:
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> a. A transfer to a foreign PDS is in the GOV'T's interest;
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> b. The employee and/or a member(s) of the employee's immediate family hold title to a residence that the employee would be eligible to sell at GOV'T expense under pars. C5692 or C5708 if transferred to/within the U.S.; and
>
> c. The employee signs a service agreement.

JTR C5716-A.1. Further, the PM services payments may continue until the employee "[t]ransfers back to a [Continental United States (CONUS)]/non-foreign [outside Continental United States (OCONUS)] PDS." JTR C5716-B.1.

It is undisputed that Ms. Bolaffi was transferred to a foreign PDS, holds title to a residence that qualifies under C5716, and signed a service agreement, satisfying subparagraphs (a), (b), and (c) of paragraph C5716-A.1. Nevertheless, it is clear that, although agencies are "permitted . . . to reimburse property management services fees for employees transferring overseas and maintaining a home in the United States," they are not required to do so. *Kenneth L. Woodworth*, GSBCA 15378-RELO, 01-1 BCA ¶ 31,282, at 154,476. The JTR indicates that approval to reimburse PM services expenses has to be obtained "through the Secretarial process," JTR C5716-A1, which "consists of action by a high-level official within DoD or by his or her designated representative." *William Meyers*, GSBCA 16702-RELO, 06-1 BCA ¶ 33,150, at 164,272 (2005). Although the agency has indicated that approval authority has been delegated to the Navy's Office of Civilian Human Resources – Headquarters (OCHR-HQ), that office never approved PM services for Ms. Bolaffi. Because reimbursement for PM services is discretionary, and because no individual with authority ever exercised discretion to grant her that reimbursement, we have no basis for ordering the agency to pay for those services. To the extent that Ms. Bolaffi relied upon the erroneous advice of other government employees who suggested that she should recover

such expenses, that advice cannot bind the Government or alter the Government's obligations with regard to Ms. Bolaffi's recovery. *See Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634, at 166,580-81. We must deny her reimbursement request for PM services.[6]

Decision

For the foregoing reasons, we grant Ms. Bolaffi's request for payment of $463.50 in lodging expenses (less any amounts that the agency may already have paid for the "complimentary" lodging nights). We deny her claims for increased reimbursement of meal expenses and for reimbursement of expenses associated with PM services.

HAROLD D. LESTER, JR.
Board Judge

[6] The agency also asserts that authorization for PM services cannot be added retroactively through amendment to previously issued travel orders, citing to paragraph C5712-E.1 of the JTR. We need not address that argument.