



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 14, 2016

CBCA 5404-RELO

In the Matter of PETER E. GODFREY

Peter E. Godfrey, Cheyenne, WY, Claimant.

Ginger Allen, Section Chief, Travel and PCS, Bureau of Land Management, National Operations Center, Department of the Interior, Denver, CO, appearing for Department of the Interior.

GOODMAN, Board Judge.

Factual Background

Claimant, Peter Godfrey, is an employee of the Department of the Interior. In *Peter E. Godfrey*, CBCA 4940-RELO, 16-1 BCA ¶ 36,250, this Board considered his claim for temporary quarters subsistence expenses (TQSE) arising from a permanent change of station in 2015. As more fully explained in that decision, the agency had authorized claimant two consecutive thirty-day periods of TQSE for claimant and his spouse, and thereafter authorized an additional period of thirty-two days. The agency reimbursed claimant for the first two periods of TQSE but subsequently determined it had incorrectly authorized the additional thirty-two days. For reasons stated in our previous decision, we returned the claim to the agency for reconsideration.

The agency reconsidered and authorized reimbursement of the additional thirty-two days of TQSE. Claimant now disagrees with the agency's interpretation of the relevant regulations and the agency's methodology for calculating the maximum allowable amount of reimbursement of his TQSE, and has filed this claim asking the Board to review the agency's determination and methodology.

Discussion

Claimant's travel orders authorized reimbursement of TQSE pursuant to the actual expense method. With regard to this method of reimbursement, the Federal Travel Regulation (FTR) requires the agency to authorize TQSE in specific increments of days:

How long may I be authorized to claim actual TQSE expenses?

Your agency may authorize you to claim actual TQSE in increments of 30-days or less, not to exceed 60 consecutive days. However, if your agency determines there is a compelling reason for you to continue occupying temporary quarters after 60 consecutive days, it may authorize an extension of up to 60 additional days consecutive days. Under no circumstances may you be authorized reimbursement for actual TQSE for more than a total of 120 consecutive days.

41 CFR 302-6.104 (2015) (FTR 302-6.104).

FTR 302-6.100 sets forth what an employee is entitled to be paid under the actual expense method of TQSE reimbursement, based upon which family members occupy temporary quarters, and provides:

What am I paid under the actual TQSE reimbursement method?

Your agency will pay your actual TQSE incurred, provided the expenses are reasonable and do not exceed the maximum allowable amount. The "maximum allowable amount" is the "maximum daily amount" multiplied by the number of days you actually incur TQSE not to exceed the number of days authorized, taking into account that the rates change after 30 days in temporary quarters. The "maximum daily amount" is determined by adding the rates in the following table for you and each member of your immediate family authorized to occupy temporary quarters:

	The “maximum daily amount” of TQSE under the actual expense method that		
	[The employee] and/or [the employee’s] unaccompanied spouse or domestic partner ¹ may receive is	[The employee’s] accompanied spouse, domestic partner or member of [the employee’s] immediate family who is age 12 or older may receive is	A member of [the employee’s] immediate family who is under age 12 may receive is
For: The first 30 days of temporary quarters.	The applicable per diem rate. [lodging: \$83 per day Meals & Incidental Expenses(M&IE): \$46 per day]	.75 times the applicable per diem rate. [lodging: \$62.25 per day M&IE: \$34.50 per day]	.5 times the applicable per diem rate.
Any additional days of temporary quarters.	.75 times the applicable per diem rate. [lodging: \$62.25 per day M&IE: \$34.50 per day]	.5 times the applicable per diem rate. [lodging: \$41.50 per day M&IE: \$23 per day]]	.4 times the applicable per diem rate.
¹ (That is, when the spouse or domestic partner necessarily occupies temporary quarters in lieu of the employee or in a location separate from the employee).			

As noted above, the FTR provides that an employee receiving TQSE reimbursement under the actual expense method will be paid for his or her actual expenses, so long as those expenses do not exceed the maximum allowable amount. FTR 302-6.100. The maximum allowable amount is the aggregate of the maximum daily amounts for each day that the employee incurs TQSE. *Id.* TQSE is authorized in increments of up to thirty days, not to exceed sixty consecutive days, with an extension of up to sixty additional consecutive days (*See* FTR 302-6.104), with a separate maximum allowable amount for each incremental period authorized. *Donald G. Lessner, Jr.*, CBCA 5288-RELO (Dec. 6, 2016).

The maximum daily amount for a given day is determined by adding together the relevant rates “for [the employee] and each member of [the employee’s] immediate family authorized to occupy temporary quarters.” FTR 302-6.100. The rate for each family member, which is also called the “maximum daily amount,” is determined from the table included in FTR 302-6.100. The relevant rates decrease after thirty days in temporary quarters. *Id.*

Under the table at FTR 302-6.100, the maximum daily amount an employee or family member receives is a specified fraction of “the applicable per diem rate.” The applicable per

diem rate for temporary quarters located in CONUS is the standard CONUS rate. FTR 302-6.102. The standard CONUS rate during the period of claimant's transfer (January - May 2015) was \$129-\$83 per day allotted to lodging and \$46 per day allotted to meals and incidental expenses (M&IE). FTR ch. 301, app. A, Per Diem Files (Archived), <http://www.gsa.gov/portal/content/103168>. In the instant case, claimant's spouse occupied temporary quarters with him, and the applicable percentage of the per diem rate (indicating the component for lodging and M&IE) is included for the employee and spouse in the regulation's table above.

Disagreement as to Methodology of Calculating Maximum Allowable Amount

Claimant was authorized two consecutive thirty-day increments and an extension of an additional thirty-two days, totaling ninety-two days of TQSE. Claimant and the agency agree that \$129 is the standard CONUS rate to be applied in the calculation of the maximum allowable amount of TQSE to which claimant is entitled. However, they disagree as to the methodology for performing the calculation. Claimant interprets the regulation as calculating one total maximum allowable amount which his total actual TQSE expenses may not exceed. The agency interprets the regulation as calculating a maximum allowable amount for each incremental period of TQSE authorized, and the total actual TQSE expenses for each period may not exceed the maximum allowable amount for that period. The agency states that claimant's methodology would allow claimant to recover an amount for the first thirty day period in excess of the actual expenses incurred in that period.

Claimant's Methodology and Calculation

Claimant calculates the maximum allowable amount as follows:

For the first 30 days:

Maximum Daily Amount = Claimant [\$129]+Spouse[\$96.75]=\$225.75

Maximum Allowable Amount= \$225.75 x 30 days = \$6772.50

For Any Additional Days:

Maximum Daily Amount = Claimant [\$96.75]+Spouse[\$64.50]=\$161.25

Maximum Allowable Amount= \$161.25 x 62 days = \$9997.50

Total Maximum Allowable Amount = \$6772.50 + \$9977.50 = \$16,770.

Claimant interprets the regulation as calculating one maximum allowable amount for the total ninety-two days of TQSE authorized, which would be the sum of the maximum allowable amount for the first thirty days and any additional days, i.e., \$6772.50 + \$9977.50 = \$16,770. Claimant maintains that he is entitled to the one maximum allowable amount of \$16,770 for the total ninety-two days, as his total actual expenses were \$16,867.97. However, claimant's actual expenses in the first thirty days of TQSE were, according to his own calculation, \$5869.78, which is \$902.72 less than the maximum allowable amount of \$6772.50 calculated above for the first thirty-day period. Thus, claimant's methodology would reimburse him for the first thirty-day period an amount *greater* than he actually incurred in that period. Also, claimant's methodology aggregates lodging costs and M&IE, does not use a separate maximum daily amount for each, and does not calculate a maximum allowable amount for each.

The Agency's Methodology and Calculation

The agency's methodology calculates a maximum allowable amount for each incremental period of TQSE authorized and reimburses what it considers to be reasonable, actual expenses incurred within each period. The agency states:

For the first 30 day period of TQSE the "maximum daily amount" was \$225.75. The "maximum allowable amount" was \$6,772.50. Mr. Godfrey's actual expenses were less than the "maximum allowable amount." As such, he was allowed his actual expenses.

For the second 30 day period of TQSE the "maximum daily amount" was \$161.25. The "maximum allowable amount" was \$4,837.50. Mr. Godfrey's actual expenses exceeded the "maximum allowable amount." As such, he was allowed the "maximum allowable amount."

For the third 30 day period of TQSE^[1] the "maximum daily amount" was \$161.25. The "maximum allowable amount" was \$4,837.50. Mr. Godfrey's actual expenses exceeded the "maximum allowable amount." As such, he was allowed the "maximum allowable amount."

The agency's methodology also appears to aggregate lodging costs and M&IE, and does not use a separate maximum daily amount or calculate a separate maximum allowable amount for each.

¹ The third period of authorized TQSE was thirty-two days.

Applicable Methodology for Calculating Maximum Allowable Amounts

In *Lessner*, this Board recently addressed the correct methodology to determine the maximum allowable amount of reimbursement of TQSE pursuant to the regulations at issue in this case. As we held in that decision, the regulations require that separate maximum daily amounts for lodging and M&IE be used to calculate separate maximum allowable rates for lodging and M&IE for each incrementally-authorized period of TQSE.

Separate maximum daily amounts for lodging and M&IE are required because under the actual expense method for reimbursement of TQSE (in contrast to a lump sum TQSE allowance) the rate for lodging cannot be combined with the rate for M&IE to produce a single lump sum daily rate. Cf. FTR 302-6.201 (requiring that the per diem rate used to calculate a lump sum TQSE allowance is “lodging plus meals and incidental expenses”). Thus, under the actual expense method, the daily lodging allotment for claimant is added to the lodging allotment for his spouse, to reach a total maximum daily amount that can be used to pay the daily lodging expenses for claimant and his spouse, provided the costs were actually incurred. Similarly, the daily M&IE allotment for claimant is added to the M&IE allotment for his spouse, to reach a total maximum daily amount that can be used to pay the daily M&IE expenses for claimant and his spouse, provided the costs were actually incurred. These separate maximum daily amounts for lodging and M&IE are used to calculate separate maximum allowable amounts for lodging and M&IE for each incremental period of authorized TQSE. *Lessner*.

Separate maximum allowable amounts for lodging and M&IE are required for each incrementally-authorized period of TQSE because TQSE is authorized in incremental periods, actual expenses are incurred within those periods, and the reimbursement of expenses incurred in each period is limited to actual expenses within each period. *Lessner*; see, eg., *Benjamin A. Knott*, CBCA 4579-RELO, 15-1 BCA ¶ 35,961 and 36,019. While the regulation requires two different rates to calculate the maximum daily amount and resulting maximum allowable amount—one rate for the first thirty days of authorized TQSE and a reduced rate for any additional authorized days—calculating maximum allowable amounts for lodging and M&IE for each incrementally-authorized period of TQSE assures that an employee is not overcompensated in any given period in excess of actual expenses incurred in that period.

Claimant and the agency have not correctly calculated the reimbursement allowed by regulation. Claimant’s methodology does not use separate maximum daily amounts to calculate separate maximum allowable amounts for lodging and M&IE, nor does it calculate separate maximum allowable amounts for each incrementally-authorized period. While the agency’s methodology does calculate a maximum allowable amount for each incrementally-

authorized period, it does not use separate maximum daily amounts to calculate separate maximum allowable amounts for lodging and M&IE within each period.

The correct calculation based on claimant's authorized periods of TQSE is as follows:

For the first period of 30 days:

Maximum daily amount for lodging = Claimant [\$83]+Spouse [\$62.25] = \$145.25

Maximum daily amount for M&IE = Claimant [\$46]+Spouse [\$34.50] = \$80.50

Maximum allowable amount for lodging = 30 days x \$145.25 = \$4375.50

Maximum allowable amount for M&IE = 30 days x \$80.50 = \$2415

For the second period of 30 days:

Maximum daily amount for lodging = Claimant [\$62.25]+Spouse [\$41.50] = \$103.75

Maximum daily amount for M&IE = Claimant [\$34.50]+Spouse [\$23] = \$57.50

Maximum allowable amount for lodging = 30 days x \$103.75 = \$3112.50

Maximum allowable amount for M&IE = 30 days x \$57.50 = \$1725

For the third period of 32 days:

Maximum daily amount for lodging = Claimant [\$62.25]+Spouse [\$41.50] = \$103.75

Maximum daily amount for M&IE = Claimant [\$34.50]+Spouse [\$23] = \$57.50

Maximum allowable amount for lodging = 32 days x \$103.75 = \$3320

Maximum allowable amount for M&IE = 32 days x \$57.50 = \$1840

Decision

We return this case to the agency to calculate claimant's reimbursement of TQSE using the correct methodology described above as compared to his actual expenses incurred.

ALLAN H. GOODMAN
Board Judge