



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 21, 2016

CBCA 5496-RELO

In the Matter of GREGORY P. WALKER

Gregory P. Walker, APO Area Europe, Claimant.

Ilona M. Keller, Human Resources Specialist, Civilian Personnel Directorate, Office of the Deputy Chief of Staff, Department of the Army, APO Area Europe, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant, Gregory P. Walker, is a civilian employee of the Department of the Army. He has asked this Board to review the agency's denial of reimbursement of certain costs he incurred pursuant to a permanent change of station (PCS) move.

Background

Claimant was issued travel orders dated May 24, 2016 for a PCS from Fort Carson, Colorado, to Wiesbaden, Germany. The travel orders indicated that travel mode included personally owned conveyance (POC) and air. Shipment of claimant's personally owned vehicle (POV) to Weisbaden was also authorized. According to claimant, he and his family vacated their permanent residence on June 16, 2016, and stayed with friends on June 16 and June 17. He is claiming only reimbursement for meals for these days. On June 18 he and his family departed Fort Carson in his POV and drove to Amarillo, Texas, where they spent the night. On June 19-25, claimant and his family stayed in Arlington and Irving, Texas, with the intent to eventually drop off his POV for shipment to Germany at the vehicle processing center in Dallas before final departure. When he attempted to drop off his POV on June 21, he was told that the facility did not have a reservation for him, even though he had a confirmation number. He did drop off his vehicle on June 25, the day of departure by air to Germany.

Claimant sought reimbursement of his costs for lodging and meals for two days (June 16 and 17, 2016) in Colorado, one day (June 18, 2016) in Amarillo, Texas, and seven days (June 19 through 25, 2016) in Arlington and Irving, Texas. He sought reimbursement of these costs as his Foreign Transfer Allowance (FTA), i.e., pre-departure subsistence expense under the Department of State Standardized Regulations (DSSR).¹ After claimant accomplished his PCS, the agency denied his claim because his final departure for the overseas assignment was not from his post of assignment/residence in Colorado but from Dallas, Texas. He has asked this Board to review the agency's denial of reimbursement.

Discussion

As we explained in our recent decision, *Patrick S. Horan*, CBCA 5424-RELO, 16-1 BCA ¶ 36,515:

“The FTA is paid pursuant to implementing regulations issued by the Secretary of State and set out in the Department of State Standardized Regulations (DSSR).” *Gregory J. Bird*, GSBCA 16110-RELO, 04-1 BCA ¶ 32,425, at 160,478 (2003). The DSSR defines the FTA as “an allowance under 5 U.S.C. 5924(2)(A) for extraordinary, necessary and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing him or herself at any post of assignment in a foreign area, including costs incurred in the United States . . . prior to departure for such post.” DSSR 241.1(a).

Id. at 177,891 (footnote omitted).

As further explained in *Horan*, “[o]ne of the four reimbursable elements of an FTA is a predeparture subsistence expense, which provides reimbursement of lodging, meals (including tips), laundry, cleaning and pressing expenses in temporary quarters for [the] employee and each member of [his or her] family,” 16-1 BCA at 177,891 (quoting DSSR 241.2(c)). “The predeparture subsistence expense is available ‘for up to 10 days before final departure from a post in the United States to a post in a foreign area, beginning not more than 30 days after [the employee and his or her family] have vacated residence quarters.’” *Id.* “The amount of predeparture subsistence expense granted to an employee for expenses in departing a post in the United States for a post in a foreign area shall be determined

¹ The DSSR governs foreign area travel and relocation of the Department of Defense's civilian employees. *Keith Hill*, CBCA 5029-RELO, 16-1 BCA ¶ 36,295, at 176,994-95 (citing Joint Travel Regulations (JTR), Introduction, B-3.c(1)).

according to the maximum per diem rate for the U.S. locality from which transferred and according to family status.” DSSR. 242.3. “[T]he ‘ten days’ referred to in the DSSR may be spent anywhere in the United States ‘as long as [the] employee or family members have not begun travel on orders and final departure is from the U.S. post of assignment.’” *Gregory J. Bird*, 04-1 BCA at 160,479 (quoting DSSR 242.3(c)).

In *Horan*, under circumstances similar to the instant case, the employee, who had also been transferred to Wiesbaden, Germany, departed his former duty station near Las Cruces, New Mexico, with his family to drive his POV to a vehicle processing center 600 miles away in the Dallas area before departing from Dallas to Weisbaden by air. In that case, as in the instant case, the agency made a similar determination that the employee and his family had not made their final departure from their U.S. post of assignment, and denied reimbursement of FTA. The Board held:

The Army asserts that, because Mr. Horan did not fly out of the Las Cruces area (or, at least, from the international airport nearest to Las Cruces) directly to the international airport in Germany closest to Wiesbaden, he cannot recover any FTA because an FTA-eligible employee must, when making his or her “final departure” from his or her United States post of assignment, travel directly from there to the new foreign duty post. It relies on DSSR 242.3(c), which provides that an employee can receive an FTA if he stays “anywhere in the U.S.” during the ten-day FTA period “as long as [the] employee or family members have not begun travel on orders *and* final departure is from the U.S. post of assignment.” (Emphasis added.) The Army reads this provision as meaning that final departure from the United States must be “from the U.S. post of assignment.” When read in conjunction with DSSR 242.1(c), it is clear that the language in DSSR 242.3(c) means only that, once the employee and his family make their “final departure” from the employee’s U.S. post of assignment to begin their travel to the new foreign duty post, the period for an FTA comes to an end. The provision cannot mean that the employee is required directly to depart the United States itself from the U.S. post of assignment — if it did, employees assigned to relatively remote United States posts without any nearby local air service could never qualify for an FTA because they could not fly directly out of the United States from their remote United States posts to their new foreign duty posts. We do not read the DSSR as limiting FTAs to employees who happen to be stationed in urban areas with easy access to international airports. To the contrary, the DSSR provisions, read together, provide for an FTA for a limited period of time up until the employee makes his or her “final departure” from the original post for the new foreign post, but without defining how long it might take the employee to get

to his or her new foreign duty station or the modes of transportation that the employee might take to get there.

Accordingly, the DSSR does not preclude an employee like Mr. Horan, as long as his travel orders permit travel by POC, from choosing to depart Las Cruces by driving to Dallas and then taking a plane from there to Germany to get to his new foreign duty station. The Army offers no credible reason that we should not consider Mr. Horan's departure from Las Cruces by POC on May 12 to constitute the start of his travel to his new foreign duty post, particularly since it was quickly followed by a direct flight from Dallas to Germany. The Army's application of a requirement for a "final departure" from the United States itself from the airport closest to the original United States post of assignment finds no support in the DSSR.

Horan, 16-1 BCA at 177,892-83.

In *Horan*, the Board held that the employee was entitled to an FTA until he made his final departure from his former duty station, Las Cruces, New Mexico, to begin his travel to his new foreign post. The Board specifically held that the employee was entitled to reimbursement for the two-day period when the employee and his family stayed in a hotel in Las Cruces after vacating their residence. Once the employee and his family made their final departure from Las Cruces, his entitlement to an FTA ended. At that point in time, he had begun his travel to his new duty station in Wiesbaden (albeit with a scheduled stop in Dallas to drop his POV at the vehicle processing center). He therefore was not entitled to recover any FTA for expenses incurred after his final departure from Las Cruces. With regard to lodging and other costs incurred after the employee departed from his former duty station until he departed by air from Dallas, Texas, the Board held, although FTA could not be authorized for the period after which the employee had made his final departure from Las Cruces, we have recognized in similar circumstances that an employee who had been authorized to travel both by air and by POV might be able to recover his or her expenses as costs of travel. The Board returned the case to the agency with the direction that the agency, to the extent that it has not already done so, should consider whether the employee should recover his expenses from his departure from his former duty post through his departure from Dallas by air, as travel costs as part of his journey from his former duty station to Wiesbaden.

In the instant case, the agency states that it determined that claimant's "final departure [from his U.S. post of assignment] did not occur when he commenced his travel on June 18, 2016 via Amarillo, Texas to the greater Dallas, Texas area, but rather occurred 9 days later when he boarded a flight for Germany." The agency acknowledges that the nearest vehicle

processing center for claimant was where he dropped off his POV in the Dallas area, and states further:

[W]e chiefly acknowledge *Patrick S. Horan*, CBCA 5424-RELO, October 3, 2016, where the Board determined, in a similar situated case, that the claimant may get reimbursed for costs associated with his stay in temporary lodging prior to leaving the post of assignment but not those following his vehicle drop-off, also in Texas. Therefore, the agency is willing to reimburse Mr. Walker for the expenses he incurred on June 16 and June 17, 2016 while still in Colorado, but not those incurred on Amarillo, Texas and the greater Dallas, Texas area. . . . Upon telephonic request, the Vehicle Processing Center in Texas as the shipping center, and the Vehicle Processing Center in Mainz-Kastel, Germany, as the receiving center for POVs, advised this office that Mr. Walker's appointment for dropping his POV was scheduled for June 24, 2016; it was shipped on June 27, 2016.

The agency's willingness to reimburse claimant for expenses incurred while still in the vicinity of his former duty station in Colorado is consistent with *Horan*, as this would be an FTA for costs incurred before departure from the U.S. post of assignment, and claimant is entitled to payment of those costs as an FTA. Also, consistent with that decision, while we cannot grant an FTA for the costs incurred thereafter by claimant, the agency should also consider reimbursing claimant his expenses incurred after departing the former duty station until his departure by air to Wiesbaden.

Decision

Claimant is entitled to reimbursement representing an FTA for meals expenses incurred June 16 through 17, 2016, in Colorado, prior to the family's "final departure" from that location. We remand this matter to the agency to calculate the appropriate amount of that FTA. Although we cannot grant an FTA for the period from June 18 to 25, 2016, when the family was traveling to and staying in the Dallas area before departing for Wiesbaden, the agency should consider reimbursing claimant for expenses incurred on those days as costs of travel.

ALLAN H. GOODMAN
Board Judge