



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 20, 2016

CBCA 5202-TRAV

In the Matter of KATRINA A. SEMICK

Katrina A. Semick, Alexandria, VA, Claimant.

Thomas J. Coradeschi, Chief, Business Management Division, Maneuver Ammunition Systems, Department of the Army, Picatinny Arsenal, NJ, appearing for Department of the Army.

LESTER, Board Judge.

Claimant, Katrina A. Semick, asserts entitlement to a flat-rate per diem for lodging expenses during her long-term temporary duty (TDY) in the Washington, D.C., area. We deny her claim.

Statement of Facts

Ms. Semick was working as a civilian employee of the Department of the Army (Army) at Picatinny Arsenal, New Jersey. In mid-2015, she was assigned long-term temporary duty (TDY) in the Washington, D.C., area, which lasted for 179 days.

Before Ms. Semick received her TDY assignment, her husband rented (apparently through some type of short-term lease) an apartment in Alexandria, Virginia, near where he had recently begun a new job. The rental for the apartment was solely in the name of Ms. Semick's husband. When Ms. Semick later began her TDY assignment in the Washington, D.C., area, she joined him and moved into that apartment. Although the rental remained solely in her husband's name, Ms. Semick apparently began receiving a flat-rate per diem for

lodging and for meals and incidental expenses (M&IE), which the agency paid to her on a periodic basis.

At some point in late 2015 or early 2016 (near or following the conclusion of her TDY assignment, which apparently ended when she was assigned a permanent position with the Army in the Washington, D.C., area), her Picatinny Arsenal supervisor raised a question about her entitlement to the lodging per diem during her TDY, based upon the fact that she had moved into her husband's apartment rather than having incurred her own commercial lodging expenses. Citing to section 4250 of the Joint Travel Regulations (JTR), the supervisor indicated that a flat-rate lodging per diem is not recoverable if a traveler on long-term TDY stays with friends or relatives instead of incurring commercial lodging expenses. In response, Ms. Semick acknowledged that, prior to her TDY assignment, her husband had rented and was already living in the apartment into which she moved. Nevertheless, she asserted that her husband always had the option of moving out of the apartment and that, had she not received the long-term TDY assignment in the area, he could have stayed with relatives, which, she claimed, was always their plan if she did not receive the TDY assignment. She asserted that the availability of the flat-rate lodging per diem influenced her and her husband's decision to remain in the Alexandria apartment during the length of her TDY assignment, which, she argued, entitled her to the flat-rate lodging per diem for the length of that TDY assignment. She also indicated that she herself paid the rental expenses out of her own bank account.

Her supervisor requested that she amend her travel voucher to eliminate any request for the flat-rate lodging per diem. He stated that, "as you have shared in discussion, the residence in question was rented by the Semick family prior to your TDY start date – and the rental statement you provided does, in point of fact, have your husband's name on it. As such, it is this office's position that no additional costs were incurred by your family to provide you lodging during the TDY period – you were, to use the JTR language, 'staying with . . . relatives.'" The Defense Civilian Personnel Advisory Service (DCPAS) subsequently denied Ms. Semick's challenge to her supervisor's request, similarly indicating that, "if your husband lived at the TDY location and rented the apartment in his name prior to your TDY, this would be considered as staying with relatives (your husband) and you would not be authorized the lodging portion of the flat rate per diem."

Ms. Semick challenges the agency's decision here.

Discussion

JTR 4250-A.1 provides for "[a] reduced flat-rate per diem" – for both lodging and M&IE – "when a traveler is assigned long-term [temporary duty (TDY)] (more than 30 days

at one location).”¹ Nevertheless, “[t]he lodging portion of the flat rate per diem only applies when a traveler actually incurs a cost for suitable commercial lodging.” JTR 4250-B.3. “Lodging receipts are not required,” JTR 4250-B.5, and the lodging costs actually expended do not have to match or even come near the amount of the fixed-rate lodging per diem. *See Jim Sasser, United States Senate*, B-198536, et al. (Jan. 19, 1981) (“When travelers spend more than the flat rate, they incur the loss, when they spend less, they can pocket the difference.”). “[B]ut proof that lodging costs were [actually] incurred shall be required.” JTR 4250-B-5. If the traveler “stay[s] with friends, relatives, or in a home owned or being purchased by the traveler, when otherwise incurring no lodging cost or lodging on a Gov’t Installation,” no per diem for lodging is authorized, although the traveler will still receive the M&IE portion of per diem. JTR 4250-B.3.

Ms. Semick does not deny that, during the length of her TDY assignment, she lived in an apartment that her husband had already rented and in which he was already living before her TDY tour began. JTR 4250-B.3 clearly precludes recovery of the flat-rate lodging per diem when the traveler stays with a relative without otherwise incurring outside lodging costs. In the circumstances here, the agency acted properly in finding that Ms. Semick, having moved into a relative’s existing residence, was not entitled to the flat-rate lodging per diem under JTR 4250-B.3.

In support of her entitlement to the flat-rate lodging per diem, Ms. Semick asserts that, had she not received her TDY assignment, her husband would have moved out of the apartment and lived with relatives. She argues that, because the apartment rental costs were incurred only because she came to the Washington, D.C., area on TDY, the agency should have acknowledged a constructive reality in which she incurred true commercial lodging costs, not dependent upon her husband’s living situation, as a result of her temporary assignment. However, in evaluating a travel claim, “[t]his Board cannot consider what might have happened; we can only base our decision on actual circumstances.” *James H. Place*, CBCA 3751-TRAV, 15-1 BCA ¶ 35,903, at 175,511. Further, even assuming that the situation she describes could provide some basis for a lodging per diem, Ms. Semick provides no further information in support of this assertion, such as the names of the relatives, the location to which her husband would have moved, or any steps that she and her husband took in advance to verify the viability of their plan. It is pure speculation (at least based upon the present record) whether, had she not received her TDY assignment, her husband would have been able to get out of whatever short-term rental agreement he had and

¹ “Long-term TDY for a duration of 31-181 days at a single location is authorized at a flat-rate of 75% of the locality rate, payable for each full day of TDY at that location.” JTR 4250-A.1.a.

would realistically have been able to move in with relatives in the area for the length of Ms. Semick's TDY. "[I]n travel and relocation expenses cases, '[t]he burden is on the claimant to establish . . . the liability of the agency, and the claimant's right to payment.'" *Christopher R. Chin-Young*, CBCA 3734-RELO, 14-1 BCA ¶ 35,688, at 174,684 (quoting Rule 401(c) (48 CFR 6104.401(c))). Here, the Board has nothing but speculative possibilities before it, which is insufficient to support the per diem claim at issue. *See Kristina Klein*, CBCA 1152-RELO, 08-2 BCA ¶ 33,966, at 168,030-31 (speculation is insufficient to support claimant's argument of what she would have done in alternate circumstances).

Further, even in situations (not applicable here) under which the Federal Travel Regulation (FTR) contemplates the possibility of recovery (on an actual expense basis) of costs that the traveler incurs while staying with friends or relatives, such costs are recoverable only if, and to the extent that, the traveler is "able to substantiate" that the host incurred "additional costs" in accommodating the traveler, beyond those that the host would have incurred without the houseguest. 41 CFR 301-11.12(a)(3) (2015). The traveler cannot recover "a flat 'token' amount" if he stays with friends or relatives, but can only be reimbursed if he or she proves actual incremental costs. *Id.* And "lodging costs allegedly incurred while staying with such individuals [are] subject to special scrutiny because the rates are generally not set through an arm's-length business relationship." *Robert H. Laghaie*, GSBCA 15498-RELO, 01-1 BCA ¶ 31,411, at 155,142. Here, Ms. Semick has not alleged the existence of, much less identified, any incremental cost that her husband incurred as a result of her moving into his apartment. She has identified no basis for recovering a lodging per diem.

Finally, Ms. Semick suggests that she actually paid the rent out of her own bank account during the months that she was in Alexandria on TDY, which indicates that the lodging expenses should be considered hers. Yet, the rental agreement for the apartment was her husband's. To the extent that the rent under that agreement was not paid, the landlord's right of action, at least in the first instance, would seemingly be against the husband, not against Ms. Semick. *See generally Pension Benefit Guaranty Corp. v. Beverley*, 404 F.3d 243, 250 (4th Cir. 2005) (outside the context of a joint venture or a business partnership, "one spouse is rarely held responsible for the other's obligations"). Any rental payment that Ms. Semick made was to fulfill her husband's legal obligations, not her own. In such circumstances, Ms. Semick's voluntary decision to pay the rent cannot create a right to her recovery of a flat-rate lodging per diem.

Decision

For the foregoing reasons, we deny Ms. Semick's claim. To the extent that the agency paid Ms. Semick a flat-rate lodging per diem for a portion of her TDY in the Washington, D.C., area, it is entitled to obtain reimbursement of that disbursement.

HAROLD D. LESTER, JR.
Board Judge