



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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July 21, 2016

CBCA 5129-RELO

In the Matter of FREDDIE O. JARVIS II

Freddie O. Jarvis II, Da Lat, Vietnam, Claimant.

Joseph Magee, Sr., Chief, Missile Branch, Department of the Army, Redstone Arsenal, AL, appearing for the Department of the Army.

**RUSSELL**, Board Judge.

Claimant, Freddie O. Jarvis II, a retired employee of the United States Army (Army or agency), asks the Board to review his agency's refusal to reimburse him for travel expenses that he incurred incident to his relocation from his duty station at Kadena Air Base in Okinawa, Japan, to his place of residence in Da Lat, Vietnam. Mr. Jarvis additionally seeks reimbursement for real estate transaction expenses related to the sale of his home in El Paso, Texas. Finally, he seeks our review of a determination by the Defense Finance and Accounting Service (DFAS) that he was overpaid salary for four days in June 2015.

Background

Mr. Jarvis was stationed in Okinawa from July 2006 until his retirement on June 30, 2015. Mr. Jarvis's initial travel orders provided for return relocation to Fort Bliss, Texas. However, in or around January 2015, he submitted a request to change his relocation destination to Ho Chi Minh City, Vietnam, and on May 15, 2015, the agency approved this request.

On June 25, 2015, before his official retirement date, Mr. Jarvis left Okinawa for Ho Chi Minh City, and on July 1, 2015, he traveled from Ho Chi Minh City to Da Lat. It appears that Mr. Jarvis submitted documents requesting amendment of his travel orders to

reflect an alternate destination of Da Lat instead of Ho Chi Minh City, but those were submitted after his arrival in Da Lat.

On or around July 21, 2015, Mr. Jarvis submitted a voucher for \$13,500.75 in travel expenses related to his move to Da Lat. This amount included the cost of his travel from Okinawa to Ho Chi Minh City, a five day wait for air transportation to Da Lat, and the cost of a hotel room until he purchased a house in Da Lat in late July 2015. Also, in or around July 2015, Mr. Jarvis requested a temporary quarters subsistence allowance (TQSA) in the amounts of \$2,602.83 covering the period June 25 to June 30, 2015, while in Ho Chi Minh City, and \$6,884.20 covering the period July 1 to July 20, 2015, while in Da Lat.<sup>1</sup> In January 2016, he requested \$6,268.14 in real estate transaction expenses.

The Army approved payment or reimbursement to Mr. Jarvis for his travel from Okinawa to Ho Chi Minh City but rejected his request for expenses related to his travel from Ho Chi Minh City to Da Lat because, among other reasons, Mr. Jarvis failed to request amendment of his travel orders before leaving Okinawa. Notwithstanding this position, the agency, in July 2015, approved shipment of Mr. Jarvis's household goods to Da Lat. The Army also paid Mr. Jarvis a TQSA, but only for a period while Mr. Jarvis and his family were in Okinawa just before his travel to Ho Chi Minh City. The Army rejected Mr. Jarvis's claim for real estate transaction expenses.

Mr. Jarvis seeks review of the Army's denial of his request for travel expenses to Da Lat and TQSA while in Ho Chi Minh City and Da Lat.<sup>2</sup> As relates to his request for transportation expenses, Mr. Jarvis explains that, with the Army's knowledge, he provided his in-laws' address in Ho Chi Minh City on the travel document submitted in January 2015 because, at that time, he did not have a residence in Vietnam. He states that from June 2015 to December 2015, he had multiple conversations with the agency and was led to believe that his request to change his final travel destination to Da Lat would be honored. However,

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<sup>1</sup>It is unclear from the record whether Mr. Jarvis's request for TQSA in the amount of \$2,602.83 for the period June 25 to June 30, 2015 was included in his voucher for \$13,500.75 submitted on or around July 21, 2015, or alternatively, is the amount in addition to what was requested in the voucher. This lack of clarity, however, does not preclude the Board's review of Mr. Jarvis's claim.

<sup>2</sup>In his claim, Mr. Jarvis specifically requests "reimbursement for all travel from Okinawa to [Da Lat,] Vietnam and all authorized entitlements [in accordance with] the Joint Travel Regulation[s]." In support of his claim, he includes the forms on which he requested TQSA. Accordingly, the Board understands that Mr. Jarvis seeks review of the agency's denial of TQSA for the periods after his departure from Okinawa.

he claims that the Army never amended his orders to reflect that information so that he could obtain the correct entitlements.

Mr. Jarvis additionally asks that the Board review his request for, and the agency's subsequent denial of, reimbursement of real estate transaction expenses incurred relating to the sale of his home in El Paso, Texas. Further, Mr. Jarvis asks that the Board review a decision by DFAS, in January 2015, that he must return an alleged overpayment of his salary. It appears that the alleged overpayment is based on claimant's time away from his duty station on June 25, 26, 29 and 30, 2015. As to this time frame, claimant asserts that he was on travel status with a final destination of Da Lat. The agency asserts that claimant was not on authorized leave during this period and was therefore placed on leave without pay.

### Discussion

The Joint Travel Regulations (JTR), which are applicable to Mr. Jarvis as a former civilian employee of the Department of Defense, limit the relocation allowances to which separating or retiring civilian employees are entitled to travel for the employee and the employee's immediate family members, per diem for the employee only, and transportation and storage in transit for household goods. JTR ¶ 5504-J.

The statute dealing with TQSA provides, in pertinent part:

- (a) When Government owned or rented quarters are not provided without charge for an employee in a foreign area, one or more of the following quarters allowances may be granted when applicable:
  - (1) A temporary subsistence allowance for the reasonable cost of temporary quarters (including meals and laundry expenses) incurred by the employee and his family -
    - ....
  - (B) for a period of not more than 30 days immediately before final departure from the post after the necessary evacuation of residence quarters.

5 U.S.C. § 5923 (2012).

According to the Department of State Standardized Regulations (DSSR), which implement this statute:

A temporary quarters subsistence allowance granted immediately preceding the employee's final departure from the post shall terminate as of the earliest of the following dates:

- a. on the 31st day following commencement of the grant unless an extension is authorized under Section 122.2 by the head of the agency;
- b. the date expenses for temporary lodging are no longer incurred; however, see Section 124.33 for employee occupying no cost temporary quarters;
- c. the date of the employee's departure, or the date of departure of family members if later, under transfer orders. Where the employee's departure for transfer precedes that of family members, the temporary quarters subsistence allowance at the previous post shall not extend beyond the date preceding the date of the arrival of the new employee at the new post; or
- d. the date of separation from a Federal agency.

#### DSSR 124.2.

Under the DSSR, Mr. Jarvis is not entitled to TQSA after his departure from Okinawa on June 25, 2015. Nor is he entitled to any payment from the Army for costs incurred related to the sale of his home in Texas. Real estate transaction expenses are available under statute to employees who are transferred, not to employees who retire. 5 U.S.C. § 5724a(d); *see* 41 CFR 302-11.2 (2014), JTR 5504-J (implementing regulations).

The only remaining issue in this matter is whether Mr. Jarvis is entitled to be paid for travel expenses from Okinawa to Da Lat. The Board concludes that Mr. Jarvis should be reimbursed for these expenses. Specifically, the Army's payment to ship Mr. Jarvis's goods to Da Lat, the very short period of time spent by Mr. Jarvis in Ho Chi Minh City, and Mr. Jarvis's purchase of a home in Da Lat within about four weeks of his departure from Okinawa favor Mr. Jarvis's position that Da Lat, not Ho Chi Minh City, was his intended relocation destination.

Notably, the JTR allows for the amendment of a travel order either before or after travel under certain circumstances, including to correct an essential aspect of travel not known in advance. JTR, App. I, pt. 2, ¶ D.1.a. Such an amendment may be effectuated retroactively. *Id.* ¶ D.3.b. In this instance, given the circumstances surrounding Mr. Jarvis's relocation, the Army should have amended Mr. Jarvis's travel order to reflect Da Lat as his choice for relocation. However, because the Army refused to amend Mr. Jarvis's travel

order, it is unclear whether the Army would have approved and paid for Mr. Jarvis's selected route of travel to Da Lat which included a five-day layover in Ho Chi Minh City. Accordingly, the Army must calculate the constructive costs of what it would have considered an appropriate route and compare them to the actual costs incurred by Mr. Jarvis in traveling from Okinawa to Da Lat. *Martin Wiseman*, CBCA 1108-RELO, 08-1 BCA ¶ 33,856. If Mr. Jarvis's actual costs including the five day layover in Ho Chi Minh City are greater than the constructive costs of what the Army would have approved for an employee traveling directly from Okinawa to Da Lat, Mr. Jarvis will have to absorb the difference. *Id.*

Finally, Mr. Jarvis's request that the Board review DFAS's demand that he reimburse his agency for overpayment of salary must be dismissed. The demand directly relates to the status of his leave during the last part of June 2015. The authority to settle claims involving federal civilian employees' compensation and leave is assigned to the Office of Personnel Management (OPM). 31 U.S.C. § 3702(a)(2). Therefore, review of this particular matter is not within the jurisdiction of the Board. *Charlene Sedar*, CBCA 5337-RELO (July 5, 2016); *Shawn M. Rodman*, CBCA 5304-RELO, 16-1 BCA ¶ 36,380 (claims involving federal civilian employees' compensation and leave are reviewed by the Director of OPM). This claim will be transferred to OPM for review.

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BEVERLY M. RUSSELL  
Board Judge