



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 15, 2016

CBCA 4905-RELO

In the Matter of CHARLES K. HILL

Charles K. Hill, FPO Area Europe, Claimant.

Jacqueline D. Thompson, Director, and Maria J. Fuentes, HR Specialist, Human Resources Office, United States Naval Station Rota Spain, FPO Area Europe, appearing for Department of the Navy.

ZISCHKAU, Board Judge.

Charles K. Hill, the claimant, challenges the Department of the Navy's determination that it is not authorized to pay the temporary quarters subsistence allowance (TQSA) of his wife and children during the nineteen days prior to his arrival at his new duty station in Rota, Spain. Although the travel orders originally had Mr. Hill and his family traveling together, Mr. Hill's departure from his old station in Sugar Grove, West Virginia, was delayed due to a delay in the issuance of his government passport. Under 5 U.S.C. § 5923(a)(1)(A) (2012) and section 123.1 of the Department of State Standardized Regulations (DSSR), TQSA may be granted beginning on the date a family member arrives at the new post prior to the employee where the employee's departure has been delayed due to delays in the issuance of the employee's government passport. Accordingly, we grant Mr. Hill's claim.

Background

On March 24, 2015, Mr. Hill received a formal job offer for a position at the United States Naval Station located in Rota, Spain. The offer stated: "Upon written acceptance of this offer, request an 'Entrance of Duty' (EOD) date on or about 5/1/2015. Actual EOD date will be set based on your travel itinerary." The offer letter also stated that the letter would serve as the authorization to arrange for applying for an official passport for himself and his family. The letter states that "PCS [permanent change of station] orders will be issued by the Overseas Human Resources Office upon receipt of all required documentation." Mr.

Hill accepted the offer on March 24.

On March 27, 2015, Mr. Hill received travel orders from the Rota human resources office authorizing PCS travel from his releasing activity in West Virginia to his new official station in Spain. The orders show a reporting date at the new duty station of May 1, 2015. The orders provide for concurrent travel of Mr. Hill and his wife and children. TQSA is shown as a funded item on the orders. Even before he received his travel orders, Mr. Hill was already in contact with a Navy personnel support office in the United States to obtain the government passport.

By early May, the plan was for Mr. Hill to arrive May 16 to allow for several days of transition with the person who he was to replace at the Rota office. The plan had his family arriving in Rota a week after his arrival. On May 15, Mr. Hill forwarded to the gaining activity in Rota the travel itinerary for his wife and children, showing their departure on May 31 and arrival in Spain on June 1. The itinerary did not include travel for Mr. Hill. The plane tickets and itinerary were issued through the Navy's personnel support office in Maryland because it was determined that his family could travel on their tourist passports while their applications for government passports were being processed. The Navy's personnel support office in Maryland determined during this period that Mr. Hill had to have the actual government passport for his own travel, and could not use a pending passport application and orders from his commanding officer in lieu of the passport. In any event, there was an effort by various Navy offices to expedite the issuance of Mr. Hill's government passport so that he would be able to join his family on the same flight. Unfortunately, the passport issuance was delayed into June and Mr. Hill did not depart for Spain until June 20, 2015, the effective start date at his new position. The director of his office picked up Mr. Hill's wife and children upon their arrival on June 1 to begin the check-in process, and Mr. Hill's wife and children stayed in temporary quarters (a hotel).

Mr. Hill's request for TQSA (hotel and meals) for the period June 1-19 was denied by the Rota human resources office on the basis that Mr. Hill did not start at his new position until June 20. Mr. Hill seeks reimbursement of the TQSA for the period June 1-19.

Discussion

Statute provides 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 not in excess of 90 days after first arrival at a new post of assignment in a foreign area or a period ending with the occupation of residence quarters whichever is shorter." 5 U.S.C. § 5923(a)(1)(A). The authority to issue regulations with regard to TQSA has been delegated by the President to the Secretary of State, who has exercised this authority by promulgating sections 120 through 129 of the DSSR. *James R. Dikeman*, CBCA

4238-RELO, 16-1 BCA ¶ 36,200, at 176,654 (2015).

Pursuant to the Department of Defense's Joint Travel Regulations (JTR), civilian employees of that department in foreign areas, such as Mr. Hill, are subject to the DSSR. JTR, Introduction, B-3.c(1). DSSR section 123, which addresses TQSA upon first arrival, provides in section 123.1 (Commencement) in pertinent part:

The temporary quarters subsistence allowance grant to an employee upon first arrival at a new post, including an employee or family member occupying temporary quarters at no expense, (e.g. government-owned or leased housing), shall commence as of the applicable date shown below, or the date expenses for temporary lodging are incurred, if later:

- a. the date the employee arrives at a new post;
- b. the date a family member arrives at the new post prior to employee when the employee is delayed because of being ordered to report at another place for consultation or detail.

We have held that reimbursement of TQSA for an employee's spouse and other family members commences when they enter temporary quarters. *Dikeman*, 16-1 BCA at 176,654. The processing delay in the issuance of Mr. Hill's government passport is a situation analogous to a delay caused by a temporary detail under subpart b of section 123.1. Mr. Hill was in constant consultation with the Maryland personnel support office as well as his commanding officer who supported his transfer and travel requirements for his new position. It would be unreasonable here to exclude the statutory quarters allowance for the brief period that Mr. Hill's family stayed in a hotel awaiting his arrival at the Rota Naval Station.

Mr. Hill's claim for TQSA for the period June 1-19, 2015, is granted with respect to entitlement. We remand the claim to the agency to determine the amount of TQSA relating to Mr. Hill's wife and children for this period.

JONATHAN D. ZISCHKAU
Board Judge