



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 9, 2017

CBCA 5633-RELO

In the Matter of JOYCE L. WILSON

Joyce L. Wilson, APO Area Europe, Claimant.

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

RUSSELL, Board Judge.

On October 31, 2016, claimant, Joyce L. Wilson, was reassigned from a federal position in Riyadh, Saudi Arabia, to an information technology position with the Army's Medical Activity in Germany. She initially stayed in a hotel but, on November 4, 2016, moved to a temporary apartment.

Shortly thereafter, on November 9, 2016, her daughter passed away unexpectedly in San Antonio, Texas. Ms. Wilson went to Texas to tend to this family emergency and, while there, she became ill, requiring a hospital stay, emergency surgery, and an extensive rehabilitation period. She returned to her position on December 29, 2016. However, she had left her personal belongings in, and thus had not vacated, the off-post housing prior to traveling to Texas. Her claim centers on the agency's determination that she was ineligible for a temporary quarters subsistence allowance (TQSA) from November 10 through December 28, 2016, because she was away from her post of assignment during this period.

Discussion

"TQSA is intended to pay for reasonable subsistence expenses of an employee and immediate family members *while occupying temporary quarters* when relocating to or from

an overseas location.” *Nhia Xiong*, CBCA 5464-RELO, 17-1 BCA ¶ 36,644, at 178,462 (emphasis added). The granting of TQSA is authorized by the Overseas Differentials and Allowances Act, 5 U.S.C. §§ 5921 - 5928 (2012), and implementing regulations established by the Secretary of State under authority delegated from the President. *Nhia Xiong*, 17-1 BCA at 178,463.

The Department of State Standardized Regulations (DSSR), issued by the Secretary of State, govern TQSA eligibility criteria. *Id.* An agency may approve provision of TQSA to an employee recently transferred to a foreign area to assist with temporary lodging, meals, laundry, and dry cleaning expenses. DSSR 121. TQSA may be extended to an employee while on official travel away from post through the authorization of per diem. DSSR 126.2. The allowance terminates on the ninety-first day following the employee’s arrival at post unless the agency head has granted an extension, when the temporary quarters are no longer occupied, on the date that the employee occupies permanent quarters, the date of the employee’s departure under transfer orders, or the date that the employee separates from federal service. DSSR 123.2.

Here, the agency approved TQSA for Ms. Wilson, and reimbursed her for TQSA expenses during her initial period at post from October 31 through November 9, 2016, and for a period following her return from the United States, from December 29, 2016, to January 25, 2017. The agency argues, however, that governing regulations preclude it from reimbursing Ms. Wilson for TQSA, specifically the cost for her temporary apartment off-post which she had not vacated, for the period from November 10 through December 28, 2016, when she was in the United States. Although we are sympathetic to the personal circumstances precipitating Ms. Wilson’s temporary return to the United States, we conclude that the agency is correct.

Ms. Wilson was not occupying the temporary apartment within the vicinity of her post, nor was she on official business, from November 10 through December 28, 2016. Thus, the agency acted pursuant to the governing statute and regulation in denying her TQSA for this period. *See Keith Hill*, CBCA 5029-RELO, 16-1 BCA ¶ 36,295, at 176,996 (“[W]hen an employee is lodging many hundreds of miles from [her] duty station, [she] is not eligible for TQSA.”). Ms. Wilson was faced with back-to-back devastating situations causing her to leave and remain away from post for an extended period. She further argues that the denial of TQSA will result in financial hardship. Unfortunately, these circumstances cannot change the outcome. There is no statute or regulation authorizing either the agency or the Board to circumvent the express provision of the DSSR that TQSA is intended to cover certain expenses, for a limited period, while an employee is at post or, if away from post, on official travel. *John Chris Paitson*, CBCA 5551-RELO, 17-1 BCA ¶ 36,719, at

178,806. As the Board noted in a claim involving the denial of temporary quarters subsistence expenses, the principle underlying this restriction is that “the Government cannot . . . pay for travel expenses that are not wholly attributable to official business.” *Robert O. Jacob*, CBCA 471-TRAV, 07-2 BCA ¶ 33,661, at 166,688.¹

Accordingly, because Ms. Wilson’s travel to the United States for the period at issue was personal, not related to official business, her claim is denied.

BEVERLY M. RUSSELL
Board Judge

¹ As appropriate, the Board looks at principles governing temporary quarters subsistence expense allowances (TQSE) to determine the appropriateness of reimbursement for TQSA expenses. *Sean P. Tweed-Kent*, CBCA 5528-RELO (July 11, 2017); *Nicholas J. Thacker*, CBCA 4981-RELO, 16-1 BCA ¶ 36,231, at 176,766. “The TQSE allowance is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary [for the employee] to occupy temporary quarters,” and applies when the employee’s “new official station is located in the United States.” 41 CFR 302-6.3 to -6.4 (2016).