



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 19, 2017

CBCA 5551-RELO

In the Matter of JOHN CHRIS PAITSON

John Chris Paitson, Stuttgart, Germany, Claimant.

Yanir M. Hill, Assistant Deputy Chief of Staff, United States Army, Europe, APO Area Europe, appearing for Department of the Army.

VERGILIO, Board Judge.

Agency reasonably determined that claimant and family on weekends did not stay within reasonable proximity of new duty station; claimant has not established entitlement to temporary quarters subsistence allowance (TQSA).

John Chris Paitson (claimant), a civilian employee of the United States Army (agency), was transferred from the continental United States (CONUS) to Stuttgart, Germany, outside CONUS (OCONUS), with a report date of July 24, 2016. The agency authorized the claimant to receive for himself and family a TQSA. Not connected to work, for some off-duty periods (weekends, federal holiday, and leave), the claimant and family traveled to and from, and stayed at locations which the claimant represents as at distances of approximately 150, 200, and 600 kilometers from the center of Stuttgart. Concluding that these stays were not in reasonable proximity to the duty station, the agency denied reimbursement of TQSA for those dates.

The Department of State Standardized Regulations (DSSR) in effect at the time of reporting to the new duty station are applicable to the claimant's entitlement to reimbursement. DSSR 120 defines TQSA as an allowance granted to an employee for the reasonable cost of temporary quarters, meals, and laundry expenses incurred by the employee

and/or family members at a new post in a foreign area or immediately preceding final departure. As here relevant, DSSR 122 states that TQSA is

intended to assist in covering the average cost of adequate but not elaborate or unnecessarily expensive accommodations . . . at the post of assignment, plus reasonable meal and laundry expenses for a period not in excess of 90 days after first arrival at a new post of assignment in a foreign area, ending with the occupation of residence quarters if earlier[.]

In addressing the rate of TQSA, DSSR 125 specifies that the “location of the temporary quarters must be within reasonable proximity of the post.”

The agency determined that, for the periods in question, the locations were not at or within reasonable proximity of the post; it therefore disallowed TQSA reimbursements. The agency notes that in establishing its policies to implement this provision, it sought and received guidance from the DSSR office as to what constitutes reasonable proximity under what is not a bright line test, but one that may require the exercise of judgment. Given the distances involved, the determination is reasonable. The claimant has not demonstrated entitlement under the regulations to receive TQSA payments. *See Donald W. Hansen, CBCA 5312-RELO, 17-1 BCA ¶ 36,649* (Board upholds agency determination that temporary quarters were not in reasonable proximity of duty station under similar regulatory requirement of reasonable proximity for receipt of temporary quarters subsistence expenses, although regulation also contained an express statement that there will not be reimbursement for occupying temporary quarters at any other locations).

The claimant contends that he never intended to violate any requirements to receive the TQSA allowance and asserts that he was not made aware of the proximity requirement before receiving the agency denials. The claimant maintains that the agency has inconsistently applied the regulations, and has failed to provide unambiguous and appropriate guidance. Moreover, he notes the negative financial impact on his family. These concerns and various questions raised by the claimant are not material to the outcome, as they do not alter the language of the DSSR and the explicit limitations therein; the claimant’s intent is not at issue. The claimant, agency, and Board are bound by the regulations. The agency’s determination that the temporary quarters were neither at the claimant’s post of duty nor within reasonable proximity thereof is reasonable; the Board does not alter that decision.

The claimant does not recover the TQSA costs sought. While the agency states that, until this case was filed, it was unaware that the claimant received TQSA for an earlier period in this change of station, for a location approximately 200 km distant from the duty

station, and that if consistent with this opinion and not prohibited, it will seek to recoup that amount, that future action is not part of the claim before the Board.

JOSEPH A. VERGILIO
Board Judge