



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 10, 2018

CBCA 6159-RELO

In the Matter of MICHAEL D. SLOAN

Michael D. Sloan, El Paso, TX, Claimant.

Connie J. Rabel, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

SULLIVAN, Board Judge.

The agency, upon behalf of the claimant, Michael D. Sloan, requests an advance decision regarding the per diem rate to apply to calculate the reimbursement of temporary quarters subsistence expenses (TQSE) for Mr. Sloan's recent relocation from Germany to Fort Bliss, Texas. Mr. Sloan requests reimbursement based upon the per diem for Russia because, although Mr. Sloan never traveled to Russia, his dependents were authorized TQSE calculated with this rate. Mr. Sloan should be reimbursed using the per diem rates for Germany and Ft. Bliss.

Background

In October 2017, Mr. Sloan received orders to transfer from Germany to Texas and was authorized reimbursement for thirty days of TQSE lump sum. Mr. Sloan sought approval to receive TQSE calculated using the per diem rate for Russia because his wife and child needed to return to Russia to finalize his child's adoption prior to traveling to Texas. Mr. Sloan's orders were amended to authorize the per diem rate for Russia after Mr. Sloan obtained a legal opinion stating that he met the requirements for TQSE in another location.

Mr. Sloan never traveled to Russia with his family. Instead, Mr. Sloan's household goods were picked up between November 13 and 15, 2017, and Mr. Sloan left Germany on November 27, 2017, to travel to Texas. Mr. Sloan was originally reimbursed TQSE for himself calculated using the higher per diem rate for Russia, so the agency seeks a refund once the correct TQSE amount is calculated.

Discussion

The agency asks a series of questions, which can be reduced to a single question—which per diem rate or rates should be used to calculate TQSE for Mr. Sloan? We render this decision pursuant to 31 U.S.C. § 3529 (2012), which provides the Board delegated authority to render decisions on pending employee travel and relocation claims. *William E. Register*, CBCA 5355-RELO, 16-1 BCA ¶ 36,514, at 177,891.

The Federal Travel Regulation (FTR) defines TQSE as the “subsistence expenses incurred by an employee and/or his/her immediate family while occupying temporary quarters.” 41 CFR 302-6.2 (2017). The Department of Defense's Joint Travel Regulation (JTR) defines temporary quarters to include “[a] permanent residence . . . [as] ‘temporary’ for TQSE purposes when the [household goods] have been packed for moving and are unavailable to the residents.” JTR 5776-A. The purpose of TQSE is “to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters.” 41 CFR 302-6.3. The JTR states a similar purpose: TQSE is “intended to partially reimburse an employee for reasonable subsistence expenses incurred” incident to a relocation. JTR 5772. An agency may authorize the payment of TQSE if it determines such payment is in the Government's interest. 41 CFR 302-6.6.

To calculate a TQSE lump sum payment, an employee is to “multiply the number of days your agency authorizes TQSE by .75 times the maximum per diem rate (that is, lodging plus meals and incidental expenses) prescribed by section 301-11.6 of this subtitle for the locality at the old or new official station or combination thereof, wherever [temporary quarters] will be occupied.” 41 CFR 302-6.201; *see* JTR 5788-A.6.

The FTR limits where employees or their dependents may occupy temporary quarters:

Where may I/we occupy temporary quarters at Government expense?

You and/or your immediate family may occupy temporary quarters at Government expense within reasonable proximity of your old and/or new official stations. Neither you nor your immediate family may be reimbursed

for occupying temporary quarters at any other location, unless justified by special circumstances that are reasonably related to your transfer.

41 CFR 302-6.9. Pursuant to the JTR, the authorizing official may authorize temporary quarters “in locations not in reasonable proximity of the old and/or new [duty station]” if the circumstances “are unique to the individual employee and/or dependents, are reasonably related to the transfer, have been adequately reviewed, and justify the TQSE payment.” JTR 5778-B.1. “Temporary lodging must be occupied for TQSE [lump sum] to be paid.” JTR 5788-A.1.

Mr. Sloan may not be reimbursed TQSE calculated using the Russian per diem rate. TQSE is intended to reimburse employees for temporary quarters expenses that they actually incur either at their old or new duty stations. Mr. Sloan never traveled to Russia as part of his relocation and Russia was not near either his old or new duty station. The fact that his dependents were authorized reimbursement at the Russia per diem rate does not change the analysis. The regulations anticipate that an employee may have different temporary quarters from family members and require that an employee must show that another location is “reasonably related” to the transfer. 41 CFR 302-6.9. While Mr. Sloan’s dependents occupied temporary quarters in Russia and received TQSE reimbursement calculated based upon the applicable per diem, Mr. Sloan cannot make a similar showing.

Mr. Sloan should be reimbursed TQSE calculated using the per diem rates for both Germany and Fort Bliss, in proportion to the days that he spent in temporary quarters. Mr. Sloan spent fourteen days in temporary quarters in Germany (November 13-27, 2015), from the date his household goods were packed to the date he left for Texas, and the remaining sixteen days in Texas. Because the record does not contain the calculation of TQSE based upon this combination of days, we remand to the agency for the determination of the amount owed (or to be reimbursed by) Mr. Sloan.

Decision

The claim is remanded to the agency for a calculation of TQSE based upon fourteen days in temporary quarters in Germany and the remaining sixteen days near Fort Bliss, Texas.

Marian E. Sullivan

MARIAN E. SULLIVAN

Board Judge