



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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September 4, 2024

CBCA 8126-RELO

In the Matter of JAMES W.

Robert D. Stewart II, Supervisory Air Traffic Specialist, G3 Aviation, United States Army Europe and Africa, Department of the Army, APO Area Europe, appearing for Claimant.

Ilona M. Keller, Human Resources Specialist, Civilian Personnel Directorate, Department of the Army, APO Area Europe, appearing for Department of the Army.

**SULLIVAN**, Board Judge.

Claimant seeks review of the anticipated denial by the Department of the Army (Army) of his claim for foreign transfer allowance (FTA) lodging expenses for temporary lodging procured through Airbnb. Because we conclude that the agency's denial is based upon an incorrect interpretation of regulation, we grant the claim. The agency has yet to determine the amount that claimant should be reimbursed.

Background

In November 2023, claimant, a civilian employee of the Army, was selected for an assignment in Germany. His reporting date was March 2024. Prior to his flight to Germany, claimant spent seven days in two different Airbnb units in the United States. He seeks reimbursement of his expenses.

Claimant submitted a reimbursement worksheet and was informed that "there [was] a problem with the type of lodging" because the Army's Civilian Human Resource Agency (CHRA) "ha[d] denied recent submissions of Airbnb lodging requests based on" section 242.3(b) of the Department of State Standardized Regulations (DSSR), which the Army

claimed does not permit reimbursement for “[n]on-[c]onventional [l]odging.” Claimant did not resubmit his FTA worksheet and has not submitted a claim package to CHRA.

Claimant and his supervisor, through the exchange of a series of emails, questioned the justifications provided by Army Human Resources (HR) staff.<sup>1</sup> It appears that Army HR staff changed the justification several times in response, first citing DSSR 242.3(b), then an “Overseas Benefits [Branch] Allowances and Differentials Guide” (the Guide) published after claimant’s arrival in Germany, then a “State Department policy” which had “not change[d] since April 2023,”<sup>2</sup> and finally a “confirmation” from the State Department about reimbursement for temporary duty travel. Neither party included a copy of the Guide or the “confirmation.” Army HR staff acknowledged “that a clearer or more specific communication would . . . have helped to avoid this situation.” When asked why the Army was no longer reimbursing Airbnb expenses, the management analyst answered: “There are many things in [regulations] that are policed or not based on ‘this is the way it[’]s been’ and when challenged or changed, look like new policy but are not.”

In June 2024, claimant’s supervisor, as claimant’s authorized representative, filed the claim with the Board.<sup>3</sup> In response to the claim, the Army asserted that consideration by the Board was premature because the Army has not yet formally denied the claim. However, the Army further explained that, “if a formal claim package would be submitted . . . to the CHRA Overseas Benefit Branch . . . , this office would, as it has done previously, support non-payment of the [Airbnb] lodging expenses.”

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<sup>1</sup> Claimant and his supervisor exchanged emails with the Army management analyst assigned to process the claim, a supervisory management analyst, the Chief of the CHRA European Branch Overseas Benefit Center (CHRA Europe), and a HR specialist with the Army’s Europe and Africa Civilian Personnel Directorate. These individuals are referred to collectively as Army HR staff.

<sup>2</sup> Presumably this is another reference to DSSR 242.3(b). If this refers to another policy, neither party has clarified which policy nor provided a copy to the Board.

<sup>3</sup> Rule 402(a)(1) permits the claimant, claimant’s attorney, or claimant’s authorized representative to file a claim with the Board. 48 CFR 6104.402(a)(1) (2023). The claim submitted to the Board includes a statement from claimant that his supervisor is authorized to act as his representative.

## Discussion

### I. The Board May Resolve the Claim

The Administrator of General Services has authority to hear “claims involving . . . relocation expenses incident to transfers of official duty station.” 31 U.S.C. § 3702(a)(3) (2018). The Administrator has delegated that authority to the Board. *Roy L. Edgar*, CBCA 1985-RELO, 11-1 BCA ¶ 34,702, at 170,893; Rule 401(a), (b)(2). “Any claim for entitlement to . . . relocation expenses must first be filed with the claimant’s own department or agency,” which “shall initially adjudicate the claim.” Rule 401(c). However, this requirement is subject to an exception when further progress with the agency would be futile. *See Scott E. Beemer*, CBCA 4250-RELO, 15-1 BCA ¶ 35,960, at 175,712.

As claimant has not resubmitted his FTA worksheet or a complete claim package to the CHRA Overseas Benefits Branch, he fails to meet the requirements of Rule 401(c). However, Army HR staff repeatedly informed claimant and his supervisor that Airbnb lodging expenses would not be approved. In its response to the claim before the Board, the Army also admitted that claimant’s request would not be approved. Therefore, it would be futile to require claimant to resubmit his FTA worksheet and claim package to CHRA. We, thus, address the merits of his claim.

### II. Payment for Airbnb-Procured Lodging is Permitted

Travel reimbursements and payments for Department of Defense (DoD) civilian employees stationed overseas are governed by several regulations. The Federal Travel Regulation (FTR) applies to all civilian employees and is supplemented by the Joint Travel Regulations (JTR) for DoD employees. *See Fernando B.*, CBCA 7725-RELO, 23-1 BCA ¶ 38,377, at 186,422; *Scott M. Torrice*, CBCA 2431-TRAV, 11-2 BCA ¶ 34,839, at 171,386. The DSSR, promulgated by the Secretary of State, provide specific requirements for allowances related to employees stationed outside of the United States, including FTA, and carry the force of law. *Steven Fuller*, GSBCA 16337-RELO, 04-1 BCA ¶ 32,623, at 161,422; *see also* DSSR 013 (permitting agency heads to grant allowances subject to the DSSR); Department of Defense Instruction (DoDI) 1400.25, vol. 1250 ¶ 1.b(1) (Feb. 2012) (authorizing payment of allowances pursuant to the DSSR). For permanent change of station moves, the determination as to which expenses may be reimbursed is based on the regulations in effect at the time the employee reports to the new official duty station. 41 CFR 302-2.3 (FTR 302-2.3).

FTA “may be granted” to federal civilian employees “for extraordinary, necessary, and reasonable subsistence and other relocation expenses . . . incurred by an employee incident to establishing himself at a post of assignment in” a foreign area. 5 U.S.C.

§ 5924(2). CHRA Europe implements the above regulations by publishing Army in Europe Regulation 690-500.592 (Sept. 2018), which provides that “FTA may be authorized” for an employee eligible for living quarters allowance. *Id.* ¶ 12.b. The Army concedes that claimant met all requirements of that regulation and the DSSR but believes that the expenses cannot be reimbursed because lodging procured through Airbnb falls into the prohibited category of “non-commercial provider.” Below, we discuss each authority upon which the Army relies and explain how those authorities do not support the Army’s denial.

#### A. FTR

FTR chapter 301 governs travel allowances for temporary duty. In chapter 301, conventional lodging is described as a “hotel/motel, boarding house, etc.” FTR 301-11.12(a)(1). Non-conventional lodging “includes college dormitories or similar facilities or rooms not offered commercially but made available to the public by area residents in their homes.” *Id.* 301-11.12(a)(4). Chapter 301 permits reimbursement of non-conventional lodging expenses for temporary duty travel only when conventional lodging in the area is nonexistent or in short supply because of a special event. *Id.* The FTR also requires that employees traveling for temporary duty use the agency’s travel management system (TMS), *id.* 301-50.3, and prevents recovery of “service fees . . . or other additional costs” which “result[] from” the employee’s failure to use the agency’s TMS. *Id.* 301-50.5.

FTR chapter 302 governs relocation allowances, which are at issue here. Chapter 302 defines “temporary quarters” as “lodging obtained for the purpose of temporary occupancy from a *private or commercial source*.” FTR 302-6.1 (emphasis added). Employees transferring more than fifty miles within the continental United States are permitted to receive an allowance for temporary quarters subsistence expense (TQSE) to reside in temporary quarters at or near the old or new duty stations. *Id.* 302-6.4, -6.10. Although TQSE is not available to travelers who are transferring outside the continental United States, *id.* 302-6.4, those travelers are permitted to receive FTA pursuant to the DSSR “for quarters occupied temporarily before departure.” *Id.* 302-3.101, tbl. B. Recent decisions demonstrate that agencies have provided reimbursement to federal employees for stays in Airbnb units. *See, e.g., Brian I.*, CBCA 7875-RELO, 24-1 BCA ¶ 38,473, at 187,001-03 (2023) (granting claim for reimbursement of the full expense of an Airbnb stay, including service fee, after agency paid part of lodging and denied service fee); *Richard W.*, CBCA 7786-RELO, 23-1 BCA ¶ 38,432, at 186,779 (agency reimbursed all FTA expenses other than service fee for Airbnb stay).

Assuming, without deciding, that the Army is correct that FTR 301-11.12(a) prohibits reimbursement of Airbnb for temporary duty because it is non-conventional lodging, the structure of the FTR does not support the Army’s position that a similar prohibition applies to relocation expenses. The FTR expressly authorizes payment of TQSE for private

temporary quarters. Although neither chapter 301 nor chapter 302 actually governs reimbursement for FTA, the structure of chapter 302 and the substantial similarity of TQSE to FTA prevent a rote transfer of the restrictions on non-conventional lodging in chapter 301 into chapter 302. Moreover, because the TMS penalties only apply to travel for temporary duty, the FTR does not prohibit claimant from seeking reimbursement for Airbnb's service and cleaning fees. *See Brian I.*, 24-1 BCA at 187,001–02.

## B. JTR

“The guiding principle behind the JTR is to travel responsibly. The word ‘responsibly’ means that the traveler exercises the same care in incurring expenses for Government travel that a prudent person would exercise if traveling at personal expense.” JTR 010102 (Mar. 2024). “A traveler must use the [DoD TMS] to the maximum extent possible to arrange all” travel.<sup>4</sup> *Id.* 010205. If the traveler instead obtains lodging through another source, “reimbursement is authorized only when the traveler provides a documented itemized receipt” which shows the daily hotel room costs, taxes, and miscellaneous fees. *Id.* 020303-A.4 (citing *Scott M. Torrice*).

In the JTR, “conventional lodging” is described as “hotel and motel lodging establishments.” JTR 020303-G, tbl. 2-16. By contrast, “nonconventional lodging” is described as lodging “obtained in other than a commercial facility.” *Id.* 020303-F, tbl. 2-15. Although the term “commercial lodging” is never described, the contrast between “commercial lodging facility” and “nonconventional lodging” in table 2-15 implies that commercial and conventional lodging may be equivalent in the JTR. *Id.*

Our predecessor board in considering these matters, the General Services Board of Contract Appeals (GSBCA), analyzed a similar case arising under the JTR almost twenty years ago. *Joanne M. Barry*, GSBCA 16845-RELO, 06-2 BCA ¶ 33,354. In that case, claimant found a room available on the Internet as a sublease from a private individual. *Id.* at 165,388. The Army Corps of Engineers initially denied the claimant's request for TQSE because it determined that she had stayed in “non-conventional lodging.” *Id.* The JTR at that time defined non-conventional lodging as including “college dormitories, similar facilities, and rooms generally not offered commercially that are made available to the public by area residents in their homes.” *See id.* In granting the claim, that board agreed that the claimant's “transaction [did] not clearly fall under conventional lodging,” but held that the nature of the arm's-length transaction made the lodging expenses eligible for reimbursement. *Id.* at 165,388-89. In the repeated updates to the JTR since *Joanne M. Barry* was issued,

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<sup>4</sup> Unlike the FTR, the JTR does not prohibit reimbursement of service fees when an employee fails to book travel via the agency TMS.

DoD has not added any language which compels a different analysis. Accordingly, the JTR does not prohibit reimbursement for stays in an Airbnb or similar establishment.

The Army has not alleged that claimant's incurred expenses were not the product of arm's-length transactions. Here, as in *Joanne M. Barry*, the fact that the property was owned by a private, rather than commercial, entity is not dispositive as to whether the lodging was obtained through a commercial transaction. Moreover, the Army agrees that the Airbnb lodging provided a cost savings to the Government, which is in line with the "guiding principle" to travel responsibly and prudently.

### C. DSSR

Under the DSSR, agencies are authorized to reimburse employees' pre-departure lodging expenses, subject to per diem rates for the locality. DSSR 242.3. Reimbursement for commercial lodging is allowed, but receipts are required; reimbursement for "non-commercial lodging" is not allowed. *Id.* 242.3.b. The DSSR does not define commercial or non-commercial *lodging*, but it defines commercial *housing* as "housing that is occupied on a short-term basis, such as a hotel, motel, commercially-leased house or apartment, or other transient-type commercial establishment." *Id.* 242.3. "Examples of non-commercial *housing* include employee-owned housing, living with family or friends, and apartment rentals where the lease term is longer than six months." *Id.* (emphasis added). The DSSR does not use the terms "conventional lodging" or "non-conventional lodging."<sup>5</sup>

The Army concedes that Airbnb is a commercial platform for obtaining lodging but insists that employees may not be reimbursed the costs for staying at a unit made available through Airbnb because "the actual provider[s] of the lodging facilities . . . are private individuals." The inclusion of "commercially-leased house[s] or apartment[s]" as commercial housing under the DSSR undercuts the Army's argument: houses or apartments which are *leased* commercially are commercial in nature. This statement is not qualified or limited by whether the *owner* or "actual provider" is a "private individual[]." Moreover, the Army's reading of the DSSR would preclude reimbursement for staying at privately-owned hotels or motels, such as traditional bed-and-breakfast establishments.

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<sup>5</sup> The Army suggests that a recent change to the DSSR required the Army to refuse to reimburse Airbnb and other purportedly non-commercial lodging providers. However, the oldest version of the DSSR posted on the State Department's website contains substantially the same language as the current version. DSSR 242.3(b) (Oct. 2005).

D. Federal Statutes

The Administrator of the Federal Emergency Management Agency (FEMA) must approve “hotels, motels, and other places of public accommodation” which meet the requirements of the Federal Fire Prevention and Control Act of 1974. 5 U.S.C. § 5707a(f)(2); *see also* 15 U.S.C. § 2225. In turn, the Administrator of General Services cannot include any “hotel, motel, or other place of public accommodation” that FEMA has not approved “in any directory which lists lodging accommodations.” 5 U.S.C. § 5707a(c). Agencies must ensure that, for at least ninety percent of the nights, employees book commercial lodging in FEMA-approved units. *Id.* § 5707a(a)(1).

Despite the Army’s contention that this statute precludes federal employees from booking lodging through Airbnb, the statute does not place any such restrictions or obligations on federal employees. *See Miles K. Frampton*, CBCA 6451-TRAV, 19-1 BCA ¶ 37,378, at 181,713 (“Thus, the requirement [in 5 U.S.C. § 5707a] is for the agency, not an employee. . . .”).<sup>6</sup>

E. Army Policy or Guide

Finally, the Army relies upon a purported Army policy change as the basis for its denial of the claim. In its response to the claim, the Army contends that “CHRA Overseas Benefits Branch advised their serviced commands and organizations . . . of the change of the DSSR.” Agency Response at 4. In the exchange of emails between claimant and his supervisor, the change is described as guidance that was made explicit in the Overseas Allowances and Differentials Guide, published in April 2024.

As noted, this new policy or guide was not provided to the Board. If it was issued in April 2024, it would not apply to claimant since he arrived at his new duty station in March 2024. The Guide is not posted on CHRA Europe’s website. *See Overseas Entitlement Information*, CHRA Portal, [https://portal.chra.army.mil/hr\\_public?id=kb\\_article&kb\\_base=15f7dc56f0b78700d85301ff8e12e28f&sys\\_id=62e93d88cce9e780d8534310fbbb92c0](https://portal.chra.army.mil/hr_public?id=kb_article&kb_base=15f7dc56f0b78700d85301ff8e12e28f&sys_id=62e93d88cce9e780d8534310fbbb92c0) (last visited Aug. 30, 2024). The CHRA Europe website also does not contain the words

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<sup>6</sup> The Army argues that Airbnb units most likely would not be certified as fire safe. In fact, FEMA’s list of approved places of public accommodations contains 241 entries categorized as “Short Term Rental”; seventy-five of these entries appear to be individual residential units because the “Name” column simply shows the street address, not the name of a commercial lodging provider. *List of Approved Hotels and Motels for Federal Travelers*, FEMA, <https://apps.usfa.fema.gov/hotel> (last visited Aug. 30, 2024) (on website, click “Download all listings CSV ~ 8MB”).

“Airbnb,” “commercial,” or “conventional.” *Id.* The Department of Defense Overseas Allowances and Differentials Guide—to which the CHRA Europe website links—has not been updated since 2012, and it only mentions “commercial lodging” in one sentence that is not directly related to FTA. DoDI 1400.25, vol. 1250, encl. 2 ¶ 2.b. Likewise, Army in Europe Regulation 690-500.592 does not contain any language relevant to whether CHRA will limit FTA payments for non-conventional or non-commercial lodging facilities.

The payment of FTA is discretionary, not mandatory. Under 5 U.S.C. § 5924(2), the Army could decide not to pay FTA at all or issue prohibitions on reimbursement for specific commercial or non-commercial providers. However, this discretion is not “unfettered” and must “be applied in a manner that [is] not arbitrary and capricious.” *Charles A. Houser*, CBCA 2149-RELO, 11-1 BCA ¶ 34,769, at 171,112.

It appears that the Army has made essentially no effort to notify travelers that it would no longer be reimbursing expenses for lodging procured through Airbnb, and the comment by the Army’s management analyst that this policy was “policed or not based on ‘this is the way it[’]s been’” indicates that the Army has been enforcing this policy inconsistently. If claimant diligently read all applicable parts of the FTR, JTR, DSSR, relevant statutes, and recent decisions of the Board, he would have reasonably concluded that FTA reimbursement *was not* prohibited for lodging procured through Airbnb. The Army may opt to end discretionary reimbursement for Airbnb-procured lodging, assuming that its actions are consistent with the FTR and the JTR, but it must apprise travelers of that fact.<sup>7</sup> Without having done so, the Army’s denial of this claim is contrary to applicable regulations and guidance.

### Decision

We grant the claim. The agency shall determine the amount to be reimbursed.

Marian E. Sullivan  
MARIAN E. SULLIVAN  
Board Judge

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<sup>7</sup> Both the Navy and the Air Force have published explicit guidance on their Airbnb reimbursement policies for “widest dissemination.” Message from MyNavy Career Center, *Pay and Personnel Information Bulletin 22-15*, (May 27, 2022); Memorandum from Eric I. Cuebas, Director, Air Force Accounting and Finance Office, to AFIMSC/RMF, NGB/FM, AFRC/FM, and All Comptroller Squadrons and Flights, *Clarifying Guidance for Nonconventional Lodging (Airbnb, VRBO etc.)*, (Sept. 20, 2021).