UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 22, 2015

CBCA 4579-RELO

In the Matter of BENJAMIN A. KNOTT

Benjamin A. Knott, Arlington, VA, Claimant.

Rickey N. Lawrence, Chief, Financial Management, Department of the Air Force, Arlington, VA, appearing for the Department of the Air Force.

LESTER, Board Judge.

Claimant, Dr. Benjamin A. Knott, challenges the Department of the Air Force's decision to limit the amount of his temporary quarters subsistence expense (TQSE) reimbursement.

Background

On March 5, 2014, the Department of the Air Force issued orders for Dr. Knott's permanent change of station (PCS) from Wright-Patterson Air Force Base (Wright-Patterson AFB), Ohio, to Arlington, Virginia. In his PCS travel orders, Dr. Knott was authorized reimbursement for TQSE on an "actual expense" (AE) basis for a period of sixty days. Dr. Knott was apparently told by individuals at his original post of duty at Wright-Patterson AFB that he would be entitled to reimbursement of lodging and meal expenses up to the daily per diem rate for the Washington, D.C., area, which at the time was $224 for lodging and $71 for meals. Dr. Knott incurred, and submitted a request seeking reimbursement of, hotel lodging costs of $253.12 per night, plus varying meal expenses, from May 11 through June 21, 2014. The Air Force denied a large portion of that request, granting Dr. Knott

TQSE(AE) totaling only $129 per day for twenty-one of the thirty days from May 11 through June 9, 2014 (giving him nothing for the other nine days within that period), and $96.75 per day from June 10 through 21, 2014. In a travel voucher payment notice in the record, the agency indicated that it had deducted monies from his TQSE(AE) payment to account for a six-day househunting trip (HHT) that Dr. Knott had previously taken, but the agency's deductions are not consistent with a six-day HHT, and there is no other information in the record establishing that Dr. Knott, in fact, took a HHT.

Discussion

I. The Applicable Per Diem Rate for TQSE Payment

TQSE are "subsistence expenses incurred by an employee and/or his/her immediate family while occupying temporary quarters." 41 CFR 302-6.2 (2013). If an agency authorizes a TQSE allowance, it "must specify the period of time allowed for [the employee] to occupy temporary quarters." *Id.* 302-6.7(a). The Air Force here authorized Dr. Knott to receive TQSE while occupying temporary quarters for a period of sixty days. He only occupied temporary quarters for forty-two days, from May 11 through June 21, 2014. He is entitled to TQSE, on an AE basis, for that entire forty-two-day period.

Although Dr. Knott is entitled to TQSE(AE) for the forty-two days that he is seeking, he cannot recover the full lodging and meal costs that he incurred. "The Federal Travel Regulation [FTR] dictates that the maximum daily amount an employee claiming actual TQSE may receive for the first thirty days in temporary quarters is 'the applicable per diem rate' for the employee." *Jerry L. Sorensen*, CBCA 3828-RELO, 14-1 BCA ¶ 35,790, at 175,055 (quoting 41 CFR 301-6.100). "The 'applicable per diem rate' for temporary quarters in the continental United States (CONUS) is the standard CONUS rate," rather than the per diem for a particular locality. *Id.* (emphasis added) (quoting 41 CFR 302-6.102). The standard CONUS rate, as set forth in the Joint Travel Regulations (JTR) in effect at the time of Dr. Knott's transfer, was $83 for lodging and $46 for meals and incidental expenses, which, added together, total $129. *See* JTR C5360-A.1 (actual expense TQSE "is an actual expense allowance based on the . . . $129 Standard CONUS per diem rate for temporary lodging occupied in any CONUS locality (effective 1 October 2013)"). Accordingly, for the first thirty days of his TQSE, Dr. Knott would be entitled to reimbursement of no more than $129 per day. "[T]he rates change after 30 days in temporary quarters," limiting the employee to reimbursement of ".75 times the applicable per diem rate" for the remaining period. 41 CFR 302-6.100. Seventy-five percent of the applicable standard CONUS rate is $96.75, which is the maximum daily amount that Dr. Knott could receive after the first thirty days of his TQSE.

Dr. Knott indicates that he understood, based upon discussions with Air Force employees who supposedly are responsible for and knowledgeable about PCS travel, that he would be able to recover TQSE in accordance with the locality per diem for the Washington, D.C., area, just as he would if he were traveling on temporary duty (TDY). Unfortunately, as the Board explained in *Debra K. Armstrong*, CBCA 3712-RELO, 14-1 BCA ¶ 35,676, a case with facts that are remarkably similar to those here, that misinformation does not affect the applicability of the $129 standard CONUS per diem rate limitation. In *Armstrong*, the claimant was transferred to the Washington, D.C., area with a travel authorization that, like Dr. Knott's, permitted TQSE(AE) reimbursement on an actual expense basis for up to sixty days. Like Dr. Knott, the claimant in *Armstrong* "was advised by agency personnel that she would be allowed reimbursement for lodging, meals, and incidental expenses up to the per diem rate in effect for the Washington, D.C., area." *Id.* at 174,611. Nevertheless, the regulations in effect at that time, as in this case, "only permit[ted] TQSE reimbursement for actual costs expended up to the standard [CONUS] per diem rate." *Id.* The Board recognized that, even though the claimant there "allude[d] to a lack of familiarity with all of the provisions of the applicable travel regulations, it is well settled that an employee subject to the FTR and JTR is responsible for knowledge of those regulations." *Id.* at 174,612. After discussing yet another TQSE(AE) case in which a federal employee was denied the locality per diem even though he had been required to stay in a "high cost area similar to D.C.," the Board held that it has no ability to require reimbursement beyond what the regulations allow:

> The same result, unfortunately for claimant, must occur in this case. This is so, notwithstanding that claimant received incorrect advice from the agency and finds herself unable to collect some $6000 in excess expenditures that she had expected to recover. In this regard, our Board in *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634, at 166,580, stated: "The Government is not bound by the erroneous advice of its officials, even when the employee has relied on this advice to his detriment. *E.g.*, *John J. Cody*, GSBCA 13701-RELO, 97-1 BCA ¶ 28,694 (1996)." . . . Here, the amounts of additional expenses claimant is seeking simply exceed the amounts authorized by statute or regulation.

Armstrong, 14-1 BCA at 174,612; *see Andrew K. Moghrabi*, GSBCA 16335-RELO, 04-2 BCA ¶ 32,679, at 161,729 (denying employee's TQSE(AE) claim for expenses beyond the standard CONUS per diem rate, even though "it will not compensate the employee for all actual expenses incurred").

Although it is difficult to fathom how Dr. Knott could have found acceptable temporary lodging within the standard CONUS rate in the Washington, D.C., area, we have

previously noted that "[w]hether the differences between the amount of allowable reimbursement of expenses for TDY and PCS are unfair is a policy question which is for the Congress and the regulation-writers to decide. As a quasi-judicial tribunal, we are limited to interpreting and applying the law as it exists." *Donald L. Schaffer*, CBCA 695-RELO, 07-2 BCA ¶ 33,607, at 166,436. We have no authority to grant Dr. Knott any recovery beyond the standard CONUS rate.

II. The Air Force's Calculation of Dr. Knott's TQSE Reimbursement

Applying the standard CONUS rate to his TQSE(AE) claim, Dr. Knott would be entitled to a total of $129 per day for the first thirty days of his TQSE entitlement and $96.75 per day for the remainder of his TQSE. However, the Air Force reimbursed Dr. Knott $129 for only twenty-one of the first thirty days of his TQSE and $96.75 for the last twelve days, giving him nothing for nine of the days during which he incurred TQSE. The agency provides no explanation in its submission for this reduction, and the only thing that we can find in the record relating to it is a statement in a travel voucher payment notice indicating that the Air Force had previously paid Dr. Knott for HHT[1] and that it "[d]educted the first 6 days of TQSE for the HHT." Presumably because of that HHT deduction, the agency asserts in the travel voucher payment notice that it "[p]aid 21 days of first 30 days of TQSE and 12 days of the 2nd."

The Air Force's calculations make no sense based upon the existing record. It is true that, if Dr. Knott previously took six days of HHT, the agency would need to deduct six days from his authorized sixty days of TQSE. The JTR in effect at the time of Dr. Knott's transfer provides that, "[i]f an employee is paid/reimbursed for HHT days and authorized TQSE(AE) is subsequently claimed for more than 30 days, the actual number of HHT days (NTE [not to exceed] 10) paid/reimbursed . . . are deducted from the first authorized TQSE(AE) period." JTR C5634-A. Accordingly, if "claimant was paid for [six] days of HHT," he "therefore could be reimbursed for up to [fifty-four] days of TQSE, in addition to the HHT payment." *Robert D. Tracy*, CBCA 3689-RELO, 14-1 BCA ¶ 35,636, at 174,500. Here, Dr. Knott was authorized for sixty days of TQSE, but he only used forty-two of those days. Accordingly, even if he took six days of HHT, he would still be entitled to fifty-four days of TQSE, only forty-two of which he actually used. *See James T. Rubeor*, CBCA 4084-RELO, 15-1 BCA ¶ 35,905, at 175,514 ("Where the agency has approved a sixty-day period for reimbursable TQSE, the period of HHT reimbursement is subtracted from the sixty days to

[1] A househunting trip is "a trip made by the employee and/or spouse to [the employee's] new official station locality to find permanent living quarters to rent or purchase." 41 CFR 302-5.1.

determine the period that TQSE will be reimbursable."). Nevertheless, the HHT is "deducted from the first authorized TQSE period," JTR C5634-A, meaning that the first thirty days of Dr. Knott's authorized TQSE period – for which he would receive the daily $129 standard CONUS rate – would include six days of HHT and twenty-four days of TQSE; he would then receive eighteen days of TQSE in the daily amount of $96.75, or .75 times the standard CONUS rate. *See* JTR C5634-A.2 ("For a reimbursed . . . 6-day HHT, deduct 6 days from the first authorized TQSE(AE) 30 day period.").

The agency's payment decision is not consistent with this calculation. The agency only paid for thirty-three of Dr. Knott's forty-two TQSE days – twenty-one (rather than twenty-four) of them at the $129 rate, and twelve (rather than eighteen) at the $96.75 rate. There is nothing in the record that explains this discrepancy or why the Air Force refused to pay for nine days of Dr. Knott's authorized TQSE. Further, there is nothing in the record – other than a rather cryptic statement in the travel voucher payment notice – indicating that Dr. Knott actually took HHT. In light of the sparsity of the existing record, we will require the Air Force to make a supplemental submission detailing the basis upon which it calculated the amount of TQSE payment due Dr. Knott and to provide us with copies of supporting documents. As a part of its submission, the Air Force should attach a copy of the orders under which Dr. Knott took HHT. To ensure that he has a full opportunity to address the accuracy of the Air Force's representations, we will also provide Dr. Knott time to respond to the Air Force's submission.

Decision

For the foregoing reasons, we deny Dr. Knott's request to recover TQSE at a rate above the standard CONUS rate. Nevertheless, we hold any further decision upon his claim in abeyance pending additional submissions of the parties. The Air Force shall supplement its submission to the Board with the additional information described above no later than **Friday, May 8, 2015**, and Dr. Knott may respond to that submission, if he wishes, by **Friday, May 29, 2015**.

HAROLD D. LESTER, JR.
Board Judge