



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 5, 2010

CBCA 1941-RELO

In the Matter of WILLIAM COBERLY

William Coberly, Nottingham, PA, Claimant.

Orbetta Hoffman, Office of Travel Pay Operations, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

GILMORE, Board Judge.

Claimant, William Coberly, a civilian employee with the United States Army's Communications-Electronics Command (CECOM) Software Engineering Center, asks the Board to review the denial by the Defense Finance and Accounting Service (DFAS) of his claim for temporary quarters subsistence expenses (TQSE), in the amount of \$1372.37, associated with his permanent change of duty station.

Background

In June 2009, claimant was issued a Permanent Duty Travel Authorization for his move from Ft. Monmouth, New Jersey, which was scheduled for base closure, to Aberdeen Proving Ground, Maryland. He was authorized TQSE based on actual expenses. He was to report to his new duty station on July 20, 2009. Mr. Coberly and his family moved into a hotel near Ft. Monmouth while their household goods were being packed. Near the end of June, Mr. Coberly and his family moved from Ft. Monmouth into a hotel near his new duty station. He purchased a home near his new duty station on July 1, 2009, and he and his family moved into the home the next day. He was unable to schedule the closing date closer to his report date and was unable to amend his orders to report to his new duty station earlier than July 20, 2009. Because Mr. Coberly's commute from his new home to Ft. Monmouth,

New Jersey, where he was still working, was 276 miles round trip, and because his supervisor advised him that his hotel costs would be covered under TQSE, Mr. Coberly moved into a hotel near Ft. Monmouth until it was time for him to report to his new duty station at Aberdeen Proving Ground, Maryland.

Mr. Coberly is claiming TQSE for expenses incurred for his lodging and meals after the period he and his family moved into their permanent residence near his new duty station. DFAS determined that, based upon a review of the applicable statute, Federal Travel Regulation (FTR) and Joint Travel Regulations (JTR), TQSE reimbursements are not allowed after the employee and/or a family member moves into new permanent housing.

Discussion

Pursuant to statute, the Government may pay TQSE on an actual or fixed basis when an employee transfers from one duty station to another in the interest of the Government. 5 U.S.C. § 5724a(c)(1) (2006). The relevant FTR section implementing the governing statute provides as follows:

When does my authorized period for claiming actual TQSE reimbursement end?

The period ends at midnight on the earlier of:

- (a) The day preceding the day you and/or any member of your immediate family occupies permanent residence quarters.
- (b) The day your authorized period for claiming actual TQSE reimbursement expires.

41 CFR 302-6.108 (2009). The JTR, which is also applicable to a Department of Defense employee, has the same requirement. JTR C5366-C.

In support of his position, Mr. Coberly relies heavily on the fact that his supervisor advised him to stay in a hotel near work and stated to him: "That is what TQSE is for." However, the regulations are clear that once the employee or a family member moves into permanent housing, reimbursement for TQSE is no longer allowed. Based upon the governing statute and regulations, Mr. Coberly's reimbursement period for TQSE expired at midnight of July 1, 2009. It is unfortunate that Mr. Coberly relied on his supervisor's advice; however, erroneous advice provided by government officials cannot create or enlarge entitlements that are not provided by statute or regulation. *Emily G. Gibson*, CBCA 1160-

RELO, 08-2 BCA ¶ 33,946; *Joseph E. Copple*, GSBCA 16849-RELO, 06-2 BCA ¶ 33,332. This Board, too, has no authority “to waive, modify, or depart from the Government’s official travel regulations for the benefit of any federal employee who is subject to them.” *Myles England*, CBCA 1244-RELO, 09-1 BCA ¶ 34,045, at 168,382 (2008), *quoting Charles T. Oliver*, GSBCA 16346-RELO, 04-1 ¶ 32,614, at 161,405.

Decision

The claim is denied.

BERYL S. GILMORE
Board Judge