



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 31, 2007

CBCA 786-RELO

In the Matter of KATHARINE C. HETTS

Katharine C. Hetts, Orem, UT, Claimant.

Donna Carmical, Acting Director Budget and Finance, Albuquerque Service Center, Forest Service, Albuquerque, NM, appearing for Department of Agriculture.

HYATT, Board Judge.

In March 2007, claimant, Katharine C. Hetts, an employee of the Department of Agriculture's Forest Service, was transferred in the interest of the Government from Silver City, New Mexico, to Provo, Utah. Among the relocation benefits authorized by her travel orders were a house hunting trip to Utah and fixed amount temporary quarters subsistence expenses (TQSE) for thirty days.

Ms. Hetts took a house hunting trip to Utah in early February 2007 and found a home to purchase. She completed the purchase of that home on February 27, 2007. From March 1 through 5, 2007, Ms. Hetts occupied temporary quarters at her old duty station in Silver City, New Mexico. She then traveled to Provo, Utah, on March 5 and 6, entering into temporary quarters at the new duty station on March 6. Ms. Hetts arranged for her household goods to be delivered to her new permanent residence on March 9, 2007. She did not move into the new home at that time, however, because she was having work done on the house. Rather, she remained in temporary quarters until April 8, 2007.

After Ms. Hetts submitted her voucher for relocation costs, the agency told her she could be paid TQSE only for the actual number of days (eight) that she was considered to properly be in temporary quarters. The agency reasoned that once Ms. Hetts had her

household goods delivered to the house she purchased at the new duty station, her eligibility for TQSE expired. Ms. Hetts disagrees with the agency's position, because she continued to occupy temporary quarters for a total of twenty-nine days.

Discussion

The Federal Travel Regulation (FTR) permits agencies to reimburse the expenses of occupying temporary quarters incurred by employees in connection with a relocation. 41 CFR 302-6.6 (2006). The FTR provides two options by which employees may be reimbursed. *Id.* 302-6.11.

Under the first option, the actual expense method, employees are reimbursed for their actual expenses, not to exceed the amount of the standard per diem rate paid in the continental United States for the first thirty days. After the first thirty days in temporary quarters, the maximum amount is reduced to a fixed percentage of the standard per diem rate. The maximum length of time for being reimbursed according to the actual expense method is 120 days. 41 CFR 302-6.100, -6.102, -6.104. Under this reimbursement method, the employee must document expenses and submit receipts in support of the amounts claimed. The employee's eligibility to receive the allowance ends when he or she occupies permanent quarters. *Id.* 302-6.305.¹

The other type of TQSE allowance that an agency may authorize is fixed amount TQSE. Employees reimbursed according to this method receive a lump sum payment. This is a lump sum payment of up to thirty days TQSE. The payment is equal to a fixed percentage of the per diem rate in effect at the new permanent duty station multiplied by the number of days for which TQSE is authorized, up to a maximum of thirty days. 41 CFR 302-6.200, -6.201. No extensions of time are allowed under this method. The employee is not required to document TQSE expenses under the fixed amount method. If the amount is not adequate, no additional reimbursement will be paid; if the amount is more than adequate

¹ In determining whether quarters are temporary, the FTR enumerates various factors that should be considered, such as "duration of the lease, movement of household effects into the quarters, the type of quarters, the employee's expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters." 41 CFR 302-6.305. Eligibility for actual expense TQSE is usually considered to be at an end once the employee's permanent residence is reasonably available for occupancy, which generally is when the household effects have been delivered there. *See, e.g., Rajiv R. Singh, GSBGA 16892-RELO, 06-2 BCA ¶ 33,418.*

to reimburse the employee, the employee is entitled to retain any balance left over. 41 CFR 302-6.200, -6.201.

It is the agency's prerogative to decide whether to offer an employee the option of taking a fixed amount reimbursement for TQSE. If it does so, the "determinations to offer the fixed amount method of reimbursement and the number of days offered are clearly prospective, and the agency must make those determinations in advance." *Larry A. Heath*, GSBCA 16803-RELO, 06-1 BCA ¶ 33,260 (citing 41 CFR 302-6.200, -6.304). If the agency offers a choice, the employee selects the one that he or she prefers. 41 CFR 302-6.11. Under the fixed amount method, the employee simply receives the lump sum authorized. There is no requirement to submit receipts or otherwise account for how the payment was used. *Id.* 302-6.304(a); *Heath*.

The Forest Service has provided a copy of its policy implementing fixed amount TQSE. This policy provides that "[e]mployees choosing the fixed amount . . . TQSE reimbursement are allowed up to 30 days in temporary quarters based on the number of days actually spent in temporary quarters." Although the employee need not supply receipts for temporary quarters, the policy requires a signed statement providing the number of days spent in temporary quarters. The Forest Service apparently interprets this policy, together with FTR guidance on the determination of whether occupancy is temporary, as permitting it to limit an employee's reimbursement under the fixed amount method to the actual number of days that, in the agency's view, he or she was actually eligible to occupy temporary quarters.

The Forest Service determined that Ms. Hetts's decision to have her household goods delivered to her new home ended her entitlement for TQSE and limited her payment under the fixed amount method to eight days. Ms. Hetts challenges this decision because she did not move to her permanent residence immediately, but continued to occupy temporary quarters for a total of twenty-nine days.

Regardless of the amount of time she spent in temporary quarters, Ms. Hetts is in fact entitled to be paid the entire thirty days of fixed amount TQSE that was authorized. The principles relied upon by the Forest Service in support of its decision to limit her TQSE payment to the days she spent in temporary quarters before her household effects were delivered to the new permanent residence do not apply to the fixed amount option. Under fixed amount TQSE, as explained above, the agency must determine in advance whether it will offer the fixed amount option and, if so, for how many days. If the fixed amount option is offered and elected by the employee, the election is final. Neither the agency nor the employee can change it. *See, e.g., Laurie Fenwood*, GSBCA 16805-RELO, 06-2 BCA ¶ 33,334. So long as the employee occupies temporary quarters for some period, even if substantially less than the number of days authorized, the employee is entitled to keep the full

amount authorized. *Heath*. Here, the agency's attempt, under its internal policy, to decrease retroactively the number of days paid under the fixed amount, after initially authorizing thirty days, conflicts with the FTR. As a legislative rule, the FTR is controlling. *Larry A. Semm*, GSBCA 16267-RELO, 04-1 BCA ¶ 32,527 (2003).

Decision

Ms. Hetts is entitled to be paid the full thirty days of fixed amount TQSE that was authorized.

CATHERINE B. HYATT
Board Judge