



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 15, 2010

CBCA 2063-RELO

In the Matter of XAVIER I. MIMS

Xavier I. Mims, Nashua, NH, Claimant.

Charles E. Henry, Travel Approving Official, Defense Commissary Agency, Fort Lee, VA, appearing for Defense Commissary Agency.

SHERIDAN, Board Judge.

Claimant, Xavier I. Mims, a civilian employee of Defense Commissary Agency (DeCA or agency), contests the agency's refusal to reimburse him for temporary quarters subsistence expenses (TQSE) for meals. The agency asserts that claimant has failed to provide further substantiation that the claimed meal expenses were actually incurred. We conclude that claimant is entitled to reimbursement for meal expenses, as sufficient documentation exists showing the costs claimed were actually incurred and reasonable.

Background

In February 2010, claimant received a management-directed permanent change of station (PCS) from the Oceana Naval Air Station Commissary in Virginia Beach, Virginia, to the Hanscom Air Force Base Commissary in Bedford, Massachusetts. Claimant and his spouse were authorized thirty days of TQSE actual expenses (AE) associated with the PCS. The instructions relating to claimant's TQSE advised him that all expenses were to be itemized and receipts were required for lodging expenses, laundry and dry cleaning expenses (except coin operated), and any single expense of \$75 or more (including meal expenses).

On April 5, 2010, claimant submitted his voucher for TQSE, which included \$1800.72 for meal expenses in the Virginia Beach area from March 5 through March 25, 2010, and \$853.17 for meals from March 28 through April 3, 2010, in the Burlington, Massachusetts,

area near his new duty station. Claimant verified the itemized daily expenses with his signature and request for payment.

Claimant's voucher included two TQSE worksheets itemizing each day's expenditures. Regarding expenditures for meals, the worksheets indicated the date, meal type (breakfast, lunch, or dinner), amount expended, and whether the meal was taken at "home" or in a commercial establishment. With the exception of one meal, each of claimant's itemized meal costs was well below the \$75 amount triggering the requirement for a receipt. While in Virginia Beach, claimant's and his spouse's breakfast meals typically ranged from \$18 to \$23 (\$19.36 daily average), lunch typically ranged from \$30 to \$39 (\$32.37 daily average), and dinner typically ranged from \$20 to \$40 (\$33.98 daily average).¹ In Burlington, breakfast meals typically ranged from \$27 to \$30 (\$27.81 daily average), lunch typically ranged from \$39 to \$42 (\$48.24 daily average)², and dinner typically ranged from \$49 to \$52 (\$45.82 daily average).³

In reviewing claimant's voucher, a DeCA approving official (AO) opined that the meals expenses "appeared to be high" for the times and locations where claimant and his spouse were temporarily residing.⁴ Believing that the claimed meals expenses "appeared to not reflect actual expenses," the AO required claimant to provide further substantiation for his claimed meal expenses. To substantiate the claimed meal expenses, the AO asked claimant to send him statements or receipts for automatic teller machine (ATM) withdrawals, grocery receipts, checking and savings accounts, credit cards, or the names of the restaurants in which he and his spouse had eaten. Claimant told the AO that except for a \$95.14 receipt dated April 1, 2010, for a lunch at Legal Sea Foods in Burlington, he did not have any receipts because he did not think he had to keep receipts for meals under \$75. He forwarded to the AO a list of fifteen restaurants at which he and his spouse had eaten, and two grocery stores. These included: International House of Pancakes, Texas Steakhouse, Texas Roadhouse, Wing Zone, Outback Steakhouse, Golden Corral, Olive Garden, Long John Silver, Red Lobster, Legal Seafood, Chili's, Borders, Papa John's Pizza, Domino's Pizza, Firebox BBQ, Kroger Grocery Store, and Food Lion Grocery Store.

¹ Claimant and his spouse spent an average of \$85.71 per day on meals while in Virginia Beach.

² One lunch was \$95.14, which skewed the daily average.

³ Claimant and his spouse spent an average of \$121.87 per day on meals while in Burlington.

⁴ During the periods in issue, the meals and incidental expenses (M&IE) rate for an *individual* staying in Virginia Beach was \$56 per day and for Burlington it was \$71 per day.

Finding the list to be “just a generic list of all the local restaurants (other than fast food establishments),” the AO determined that “the list by itself didn’t actually substantiate anything.” The AO again asked claimant to provide substantiation in the form of receipts, ATM withdrawal slips, grocery store receipts, checking and savings accounts statements, or credit card statements.

Claimant objected to providing further the substantiation:

You wrote me earlier and stated that I needed to send you a list of places that we ate at, which I did. I have a paperless account and must pay in order to get a copy of my statements. Sometime[s] I used my credit cards[,] sometimes cash, and then again sometime[s] I used my checking account. I will not send all of my personal information to you because you do not believe what I have entered on the form. I followed the rules that I read in the PCS packet and I did what it said to do. Please let me know the outcome so I can do what I have to do.

On April 9, 2010, the AO determined that only the lodging expenses would be paid, and that when claimant “provides receipts to substantiate meals they will be reviewed by this office and a supplemental claim will be filed to reimburse those meals that were substantiated and consumed at the old and new PDS [permanent duty station].” The AO later determined that claimant “has not provided actual meals expenses, and that accordingly, without further adequate substantiation, those claimed meals should not be paid. This agency will reimburse [claimant] for that single meal [the Legal Sea Foods lunch in which claimant provided the receipt for \$95.14 dated April 1, 2010].” The agency states:

The JTR [Joint Travel Regulations] [are] clear. A traveler on TQSE must be as prudent when expending government funds for subsistence expenses as he would be when spending his own funds. Further, although a traveler on TQSE is not “required” to keep meal receipts for expenses of less than \$75.00, when the travel approving official requires the traveler to substantiate claimed expenses, the traveler must do so.

Since [claimant] has refused to provide any substantiation, including cancelled checks, statements from banks, ATM receipts or credit card receipts, other than the single receipt mentioned by [the AO], this portion of [claimant’s] TSQE claim was properly denied.

Claimant appealed the agency’s refusal to compensate him for his meal expenses to the Board.

Discussion

When an agency transfers an employee from one permanent duty station to another in the interest of the Government, it may authorize reimbursement to the employee for the subsistence expenses incurred by him and his family while they occupy temporary quarters. 5 U.S.C. § 5724a(a)(3) (2006). The Federal Travel Regulation (FTR), which implements this statutory provision, provides that “[t]he TQSE allowance is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters.” 41 CFR 302-6.3 (2009). Where TQSE (AE) is authorized, agencies will pay an employee’s actual expenses, “provided the expenses are reasonable and do not exceed the maximum allowable amount.” 41 CFR 302-6.100.

Employees who are authorized TQSE (AE) are required to document their TQSE “by itemizing each expense,” including meals, and providing “a lodging receipt and a receipt for every expense over \$75.” 41 CFR 301-11.25, -11.306, 302-6.12. The FTR permits agencies to prescribe the manner in which their employees must itemize actual expenses. In this case, the Joint Travel Regulations (JTR), which are applicable to civilian Department of Defense (DoD) employees, contain the following relevant requirements with regard to claimant’s TQSE(AE):

C5368 RECEIPTS AND SUPPORTING DOCUMENTATION

A. Receipts and Supporting Statement

1. General. Receipts and a written supporting statement must accompany a TQSE(AE) claim as prescribed in pars. C5368-A2 and C5368-A3.

2. Receipts. Receipts are required for:

- a. Lodging costs paid, showing location, dates, and by whom occupied;
- b. Any single expense of \$75 or more (including a single meal expense of \$75 or more).

3. Supporting Statement. The supporting statement must include:

- a. The cost of each meal, for each day, by date, and where and by whom consumed

C5370 PAYMENT

A. General. TQSE(AE) reimbursement is for the lesser of the actual allowable expenses incurred for each day of the prescribed period or the maximum allowable amount payable for that same eligibility period. TQSE(AE) is:

.....

2. Limited to actual expenses incurred, up to the maximum authorized, providing the expenses are:

a. Directly related to temporary lodging occupancy with the TQSE eligibility period (par. C5366);

b. A reasonable amount; and

c. Substantiated.

3. The AO may deny reimbursement of any claimed TQSE expenses that appear to be unreasonable if the traveler cannot justify the expenses with supporting documentation. If denied, the remaining TQSE expenses of the same TQSE period may be paid. See par. C5352-D4.

a. Example 1. An employee with a dependent was authorized TQSE for 30 days at the new PDS [permanent duty station] and utilized temporary lodgings with available cooking facilities. The employee claimed TQSE meal expenses for purchased groceries during the 30-day TQSE period. The AO believes the grocery expenses to be excessive without supporting documentation. The AO may request supporting documentation, including required receipts, for any individual grocery/meal expense of \$75 or more to determine the appropriate reimbursement, IAW [in accordance with] par. C1310-A2.

b. Example 2. An employee was authorized TQSE for 45 days at the new PDS and utilized temporary lodgings without cooking facilities. The employee claimed actual daily TQSE meal expenses equal to (or nearly equal to) the maximum daily M&IE rate for each day during the 45-day TQSE period. The AO believes the same-expenses-every-day meal costs to be unjustified without

supporting documentation. The AO may request supporting documentation including receipts for any meal expense of \$75 or more to determine the appropriate reimbursement, IAW par. C1310-A2.

While receipts are not required for any meal expense less than \$75, the above regulations require the agency to review and to make a determination of reasonableness for the various expenses claimed as TQSE. However, “[b]y not requiring receipts for all but very expensive meals, the JTR place the agency in a position of accepting employee assertions as to meal costs unless the agency can demonstrate that those assertions are not true.” *Luis Rodriguez*, GSBCA 16077-RELO, 04-1 BCA ¶ 32,434 (2003), at 160,493; *see also Christine Griffin*, GSBCA 15818-RELO, 02-2 BCA ¶ 31,925.

We have reviewed in detail the submissions of both claimant and the agency. Claimant provided the supporting worksheets required by the agency, itemizing each day’s meal, the date of the meal, whether it was taken at a commercial establishment or at home, the type of meal (breakfast, lunch, or dinner), and the cost of the meal.⁵ The one meal receipt, for a meal costing more than \$75, was submitted. Claimant also provided the AO with a list of the restaurants and grocery stores where he purchased the meals.

While claimant refused to provide more documentation, that refusal does not in and of itself justify a finding that the expenses claimed were unreasonable or not reimbursable. The expense records maintained and provided by claimant to the agency meet the requirements of the FTR and JTR to provide an adequate itemization of expenses such that the agency could properly review the expenditures to determine if the costs are reasonable and reimbursable. The daily meal expenses claimant itemized are not on their face unreasonable. There is no indication in the record that the claimed meal expenses were in any way suspicious, inaccurate, or that the worksheets contained false information. Based on the amounts listed on the worksheets, we do not see any justification for the AO’s skepticism regarding the amounts claimed. The listed meal expenses are within the range of what would be acceptable for two individuals on travel -- even though they may be at the high end of that range. Given the reasonableness of the amounts claimed and the absence of a showing of fraud or impropriety, there are no bases in the existing record to deny the requested reimbursement.

⁵ The expenses that claimant recorded on his TQSE worksheets appear not to exceed the maximum allowable amount set for claimant and his spouse as calculated pursuant to provisions of the FTR and the JTR. 41 CFR 302-6.100, -6.102; JTR C5360.

Under the facts presented here, the mere suspicion on the part of the AO that the meal expenses appear to be high is an insufficient basis to support the agency's decision to deny claimant reimbursement of his meal expenses.

Decision

Based on the foregoing analysis, claimant is entitled to reimbursement of meal expenses, not to exceed the maximum allowable amount.

PATRICIA J. SHERIDAN
Board Judge