



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

---

September 28, 2015

CBCA 4586-RELO

In the Matter of IVETT A. LEYVA

Ivett A. Leyva, Falls Church, VA, Claimant.

Rima V. Silenas and Brian Hurey, Office of the Judge Advocate, Department of the Air Force, Joint Base Andrews, MD, appearing for the Department of the Air Force.

**SHERIDAN**, Board Judge.

Claimant, a civilian employee of Air Force Research Laboratory stationed at Edwards Air Force Base, California, was issued permanent change of station (PCS) orders to relocate to the Air Force Office of Scientific Research in Arlington, Virginia. Claimant seeks reimbursement for her actual expenses for temporary quarters associated with the relocation, as opposed to the \$129 per day limit that she was paid by the Department of the Air Force (USAF or agency) pursuant to the Joint Travel Regulations (JTR).

Background

Claimant was authorized sixty days of temporary quarters subsistence expenses (TQSE) on an actual expense (AE) basis for her relocation from California to Virginia. She vacated her old residence on September 22, 2014, and reported for duty at her new assignment on September 30, 2014. She began occupying her new residence in Virginia on December 4, 2014. Claimant sought reimbursement of \$13,732.25 for TQSE(AE) expenses related to lodging, meals, and laundry expenses incurred from September 29 through December 4. Claimant's net reimbursement was \$5268.66.

The agency authorized TQSE(AE) for sixty days. It provided TQSE(AE) for only fifty-four days, however, because claimant had earlier been reimbursed for a six-day house

hunting trip (HHT) conducted prior to her move. The agency also denied payment for nine days annual and sick leave from October 9 through 17, 2014.

Claimant does not explain with any precision why she disagrees with the amounts reimbursed by the agency, but the crux of her argument appears to be that because agency personnel who explained TQSE(AE) benefits to her failed to mention the \$129 maximum daily rate that would be applied, and she actually incurred expenses in excess of that daily rate, she should be reimbursed for the remainder of her expenses.

### Discussion

Statute provides that an agency may pay an employee subsistence expenses for “a period up to 60 days” while an employee or her family is occupying temporary quarters when the new official station is within the United States. 5 U.S.C. § 5724a(c)(1)(A) (2012). The agency may extend that period for up to an additional sixty days if the head of the agency or his or her designee determines there are compelling reasons for continued occupancy of temporary quarters. *Id.* § 5724a(c)(2).

The Federal Travel Regulation’s (FTR’s) implementation of that statutory provision provides that an agency may authorize an employee to claim actual TQSE in thirty-day increments not to exceed sixty consecutive days. 41 CFR 302-6.104 (2014).

### Daily rate for reimbursement

The 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 175,054 (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.* (quoting 41 CFR 302-6.102). The standard CONUS rate, as set forth in the JTR in effect at the time of Ms. Leyva’s transfer, was \$83 for lodging and \$46 for meals and incidental expenses, which, added together, total \$129. *See* JTR C5578-A.2 (TQSE(AE) “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 TQSE (reduced to twenty-four due to her HHT), Ms. Leyva 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 Ms. Leyva could receive after the first twenty-four days of her TQSE, (TQSE days 25 through 54).

Ms. Leyva indicates that when she discussed her transfer with Air Force employees who supposedly are responsible for and knowledgeable about PCS travel, there was no mention of the maximum daily rate of \$129.

We recently issued two decisions discussing TQSE(AE) extensively in the context of application of the TQSE(AE) maximum daily rate. *Benjamin A. Knott*, CBCA 4579-RELO, 15-1 BCA ¶¶ 35,961, 36,019. In those decisions, we held that we have no authority to grant any TQSE(AE) recovery beyond the standard, maximum-allowed daily rate, even where an employee was told by his agency that he would be able to recover TQSE(AE) in accordance with a higher locality per diem rate. The Board has explained in several cases that misinformation does not affect the applicability of the \$129 standard CONUS per diem rate limitation. *Debra K. Armstrong*, CBCA 3712-RELO, 14-1 BCA ¶ 35,676; *Steven L. Meints*, CBCA 898-RELO, 08-1 BCA ¶ 33,728 (2007).

#### Interruption of TQSE period

The FTR deals with the issue of an employee's interruption of temporary quarters:

#### **May I interrupt occupancy of temporary quarters?**

Yes, your authorized period for claiming actual TQSE reimbursement is measured on consecutive days, and once begun, normally continues to run whether or not you occupy temporary quarters. You may, however, interrupt your authorized period for claiming actual TQSE reimbursement in the following instances:

- (a) For the time allowed for en route travel between the old and new official stations;
- (b) For circumstances attributable to official necessity such as an intervening temporary duty assignment or military duty; or
- (c) For a non-official necessary interruption such as hospitalization, approved sick leave, or other reason beyond your control and acceptable to your agency.

41 CFR 302-6.106. The JTR places similar limitations on the tolling of a TQSE(AE) period. JTR C5364-B.2.

The FTR and JTR both require one consecutive period of TQSE for reimbursement eligibility. *Joseph S. Mikac*, CBCA 822-RELO, 08-1 BCA ¶ 33,725 (2007). In the case of permissibly interrupted TQSE, the employee is granted a day-for-day extension of the consecutive period of TQSE. *Id.*

The FTR and the JTR speak definitively to the question of tolling TQSE eligibility while employees are on annual leave: This is not permitted. However, an authorizing official (AO) may authorize additional TQSE(AE) if *occupancy is interrupted* for “non-official necessary interruptions such as hospitalization, approved leave (sick, not annual), or other reasons beyond the employee’s control that are acceptable to the AO.” JTR C5364-B.2. The AO should consider whether claimant’s occupancy was interrupted and she should be granted an extension of TQSE(AE) for the period during which she was granted sick leave.

### Decision

The claim is returned to the agency for recalculation based on the discussion above.

---

PATRICIA J. SHERIDAN  
Board Judge