



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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March 22, 2016

CBCA 5091-RELO

In the Matter of CAROLYN GONZALEZ

Carolyn Gonzalez, Ewa Beach, HI, Claimant.

Thomas Spahr, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

**GOODMAN**, Board Judge.

Claimant, Carolyn Gonzalez, is a civilian employee of the Department of Defense. She has requested that this Board review the agency's partial denial of reimbursement of costs incurred for her house hunting trip (HHT).

Factual Background

On July 22, 2015, claimant was issued permanent change of station (PCS) orders for a transfer from Torrance, California, to her new permanent duty station (PDS), Honolulu, Hawaii.<sup>1</sup> Her PCS orders authorized \$7386.08 in HHT expenses to be reimbursed by the actual expense method, of which \$4732.88 was allocated to per diem<sup>2</sup>—\$2704.50 for claimant and \$2028.38 for her spouse. The per diem authorized for the HHT was calculated using the

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<sup>1</sup> Claimant's travel from California to Hawaii is deemed OCONUS (outside the Continental United States) travel, as Hawaii is a non-foreign OCONUS area. DoD Financial Management Regulation, Vol. 9, Definitions (Sept. 2015).

<sup>2</sup> The remainder of the authorized HHT expenses were allocated to other travel expenses (airfare and other travel costs) for which claimant has been reimbursed.

applicable maximum per diem rate for her new OCONUS PDS—\$294 (\$177 maximum for lodging and \$117 for meals and incidentals).

Claimant and her spouse accomplished the HHT, traveling to Honolulu, Hawaii, on August 5, 2015, and returning on August 14, 2015. They lodged at a hotel for \$187 per night, but limited the requested reimbursement for the lodging component of per diem to the maximum OCONUS rate for lodging at the new PDS at \$177 per night, as authorized in the PCS orders. Claimant submitted her travel voucher for reimbursement to the agency, which included \$4732.88 for per diem, the amount authorized in her PCS orders for her and her spouse.

The agency reimbursed \$2072 for per diem—\$1184 for claimant and \$888 for her spouse. The agency denied reimbursement of \$2660.88, the remainder of the per diem claimed, asserting that, pursuant to applicable regulations, claimant was only entitled to per diem calculated at the standard CONUS rate of \$129 (\$83 maximum for lodging and \$46 for meals and incidentals), and not the OCONUS rate authorized in her PCS orders. Claimant has asked this Board to review the agency's partial denial of reimbursement of the per diem costs.

### Discussion

The Federal Travel Regulation (FTR) defines an HHT a “a trip made by the employee and/or spouse to your new official station locality to find permanent living quarters.” 41 CFR 302-5.1 (2015) (FTR 302-5.1). The trip is intended to facilitate and expedite the employee's move from the old official station to the new official station and to lower the Government's overall cost for the employee's relocation by reducing the amount of time an employee must occupy temporary quarters. *Id.* 302-5.2. An HHT is to be taken “in advance of the travel,” *id.* 302-5.6(a), and must be completed by “[t]he day before you report to your new Official station.” *Id.* 302-5.12. When an employee is on an HHT, the employee is in a duty status. *Id.* 302-5.17.

Claimant asserts that she is entitled to the applicable maximum per diem rate for Honolulu, Hawaii, in the amount of \$294 per day that was used to compute the authorized allowance for per diem in her PCS orders, to be reimbursed pursuant to the actual expense method.

Claimant's position is supported in the FTR and the Joint Travel Regulations (JTR), applicable to civilian employees of the Department of Defense. FTR 301-11.6 states that maximum per diem rates and actual expense rates for CONUS and OCONUS travel are to be found in specific sources. The JTR in effect at the time of claimant's travel stated in JTR

5534-C.2.5 that per diem rates for OCONUS travel apply to HHT which involves OCONUS travel. This use of OCONUS rates for OCONUS travel is reiterated in JTR 5552.

FTR 301-11.303 contains the parameters for reimbursement of travel expenses pursuant to the actual expense method specified in claimant's PCS orders:

**What is the maximum amount that I may be reimbursed under actual expense?**

The maximum amount that you may be reimbursed under actual expense is limited to 300 percent . . . of the applicable maximum per diem rate. However, subject to your agency's policy, a lesser amount may be authorized.

Claimant's PCS orders authorized reimbursement of the HHT at actual expense, with the per diem component limited to the maximum OCONUS per diem applicable to her new duty station. This authorization was well within the requirements of the FTR when the actual expense method is used, as the amount authorized for per diem of \$294 was less than 300% of both the OCONUS rate of \$294, used to calculate the authorized fees, and less than 300% of the CONUS rate of \$129, which the agency subsequently asserts should have been used.<sup>3</sup>

Claimant is entitled to reimbursement of the total per diem claimed, including the amount denied by the agency, as the total per diem claimed was the amount authorized in her PCS orders under the actual expense method and supported by the application of the regulations cited above. The employee acted in accordance with the authorization in her PCS orders, submitting expenses incurred for reimbursement as authorized. The equitable rule has been established that once an agency has authorized travel or relocation allowances

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<sup>3</sup> The agency bases its denial of a portion of the per diem authorized in the PCS orders on its belief that the per diem must be calculated using the CONUS standard rate. In support of this position, the agency cites to FTR 302-5.13, which only cites to the standard CONUS rate for calculating per diem for HHT. However, there is no reference in that section of the FTR to OCONUS travel, for which per diem is not calculated by the standard CONUS rate. The agency also notes that JTR 5534 was amended as of September 15, 2015, after claimant completed her travel for her HHT. The amendment continued to apply the applicable maximum per diem rate to OCONUS travel, but specified that it was applicable to "HHT (lump sum method only)." As claimant's PCS orders, issued before the amendment, clearly indicate the intent to reimburse claimant by the actual expense method, this amendment does not affect claimant's entitlement.

which it had the discretion to grant, and the employee incurs expenses in reliance on the authorization, the agency must reimburse the employee for those expenses. *Robin A. White*, CBCA 4058-RELO, 15-1 BCA ¶ 35,871; *Robert O. Jacob*, CBCA 471-TRAV, 07-1 BCA ¶ 33,530; *Thelma H. Harris*, GSBCA 16303-RELO, 04-1 BCA ¶ 32,540 (2003); *Linda M. Conaway*, GSBCA 15342-TRAV, 00-2 BCA ¶ 31,133.

Decision

The claim is granted.

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ALLAN H. GOODMAN  
Board Judge