UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 14, 2012

CBCA 2632-TRAV

In the Matter of YONG-HEE ANDREAN

Yong-Hee Andrean, APO, Area Europe, Claimant.

Christine L. Murray, Chief, Civilian Human Resources Flight, Department of the Air Force, APO, Area Europe, appearing for Department of the Air Force.

POLLACK, Board Judge.

Claimant, an employee of the Defense Contract Audit Agency (DCAA), seeks payment of $1595.95 for nine days of temporary quarters subsistence allowance (TQSA) (lodging, and meals and incidental expenses (M&IE)), which were denied her by the Department of the Air Force (AF) on the basis that for those days, claimant's lodging was not at her permanent duty station. Based on location alone, the AF determined that any payment for TQSA would violate Department of State Standardized Regulation (DSSR) 122.1. The AF contention appears to be that the regulation allows for TQSA reimbursement only if the lodging is at the precise site (apparently within the corporate limits) of the employee's new duty station. In this claim there is no dispute that claimant's official duty station was Wiesbaden, Germany. There is also no dispute that, for the period at issue, claimant's temporary lodging in Landstuhl, Germany, was approximately an hour's drive from Wiesbaden.

By statute, TQSA is intended to pay for reasonable subsistence expenses of an employee and immediate family members while occupying temporary quarters when relocating to or from an overseas location. 5 U.S.C. § 5923 (2006). The statute provides:

> (a) When Government owned or rented quarters are not provided without charge for an employee in a foreign area, one or more of the following quarters allowances may be granted when applicable:

> (1) A temporary subsistence allowance for the reasonable cost of temporary quarters (including meals and laundry expenses) incurred by the employee and his family –
>
> > (A) for a period not to exceed 90 days after first arrival at a **new post of assignment** in a foreign area or a period ending with the occupation of residence quarters, whichever is shorter . . . .

Id. § 5923(a) (emphasis added).

The above statute applies to employees such as claimant through the DSSR. The AF denies reimbursement to claimant on the basis that, in its view, DSSR 122.1 prohibits payment. The AF relies upon the following wording:

> Purpose: The temporary quarters subsistence allowance is intended to assist in covering the average cost of adequate . . . accommodations in a hotel, pension or other transient-type quarters at the **post of assignment**.

(Emphasis added).

The AF takes the position that it must read "post of assignment" to be the site set out in the travel orders and that it is impermissible for it to allow reimbursement for lodging in another German city. According to the AF, since Landstuhl is not the city where claimant is officially posted, no TQSA payment can be made.

The operative facts surrounding this claim are that claimant, accompanied by her husband, reported for duty at the European Branch Office in Wiesbaden, Germany, on June 21, 2011, for a three-year assignment. The couple immediately moved into the Wiesbaden Army Lodge while they looked for housing. There is also no dispute that she was entitled to reimbursement while in the lodge for a period of up to ninety days.

While claimant was on a temporary duty assignment (TDY) to Qatar, but while she and her husband were still living in the lodge, her husband fell ill and had to undergo an emergency operation at a local German hospital in Wiesbaden. Thereafter, due to medical complications, claimant's husband was ultimately directed to a U.S. Regional Medical Center in Landstuhl, Germany, for follow-up evaluation. The Landstuhl hospital was approximately a one hour drive from Wiesbaden.

Claimant decided to be with her husband in Landstuhl during this period. Because she did not know when she would be back in Wiesbaden, she decided it would be fair to vacate the Army Lodge in Wiesbaden and seek lodging in Landstuhl, to be with her husband. She left their belongings in a storage room at the lodge, at no cost, and planned to return there as soon as possible. The parties agree that there is no double payment for lodging associated with this claim. For the period for which she seeks compensation, the claimant had checked out of the lodge. Moreover, in seeking payment, the lodging portion decreased substantially from what she would have been reimbursed in Wiesbaden. Her costs for the Landstuhl lodging were only $289.50 for the nights used. During her stay in Landstuhl she spent three nights in the Fisher house, thereby incurring no lodging costs for those days. She does seek reimbursement for the M&IE costs for those three days. Additionally, during the nine-day period, starting on Thursday, July 20 and continuing on work days until July 28, claimant performed approved telework from her location in Landstuhl.

While the AF concedes that claimant did not go on vacation, but was forced to interrupt her stay at Wiesbaden due to a medical issue, it concludes that there is no provision to waive this rule for humanitarian or any other reason and deny her claim for lodging and M&IE for those days.

Decision

Neither the statute nor the DSSR regulations define specific geographical limits for the term "new post of assignment." Nothing in either draws a concentric circle around the site noted on the travel orders and provides that any lodging outside of a certain mile limit from center city is not allowable. In this case, the denied location was but an hour from her post in Wiesbaden. We consider the Landstuhl location within commuting distance to Wiesbaden. Clearly, the term "post of assignment" has limitations. However, at a minimum, the term conveys not only the geographical center, but also reasonable distance therefrom. Accordingly, we find that the Air Force improperly denied the TQSA claim and should pay claimant the $1585.95 that had been denied.

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HOWARD A. POLLACK
Board Judge