



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 12, 2011

CBCA 2189-RELO

In the Matter of Ronald F. Lutrell

Ronald F. Lutrell, N. Pole, AK, Claimant.

MSgt. Michelle Porreca, Chief, Financial Services Office, Department of the Air Force, Eielson Air Force Base, AK, appearing for Department of the Air Force.

GILMORE, Board Judge.

Mr. Ronald Lutrell works for Air Force Engineering and Technical Services (AFETS or agency). Mr. Lutrell received orders for a transfer from Aviano Air Base, Italy, to a new permanent duty station (PDS) at Eielson Air Force Base (Eielson) in Alaska. Mr. Lutrell signed a transportation agreement on February 1, 2010, in which he accepted the offer for fixed temporary quarters subsistence expenses (TQSE), with a travel date of June 18, 2010. TQSE is a discretionary allowance intended to partially reimburse an employee for reasonable subsistence expenses incurred when it is necessary for the employee and/or the employee's dependents to occupy temporary lodging incident to a permanent change of station move. JTR C5350.

Mr. Lutrell stated that when the fixed TQSE (TQSE(F)) was offered, he was advised that Eielson had two rates, and that since he would be traveling during the summer, he would receive the summer rate. The difference between the summer and winter rates is important because the cost of lodging and subsistence in Alaska is substantially higher in the summer due to tourism. However, Mr. Lutrell was eventually paid \$3465 by the Air Force Financial Services Center (AFFSC), which was calculated by using the maximum per diem winter rate for Eielson and multiplying it by 75%. If the maximum per diem summer rate for Eielson had been used in the same calculation, Mr. Lutrell claims that he would have received \$5918.

Mr. Lutrell filed a relocation claim with this Board requesting a review of the TQSE(F) payment determined by AFFSC, which he contends should have been calculated under the summer, instead of the winter, rate.

The issue before the Board is whether the Joint Travel Regulations (JTR) require that the TQSE(F) be paid at the rate applicable for the date the employee accepts the TQSE offer or the date the employee actually travels to the new PDS.

Discussion

If an agency decides to reimburse an employee for TQSE, it can give the employee the option of being reimbursed in accordance with either the fixed amount method or the actual expense method. The fixed amount method provides an employee with a fixed amount for up to thirty days, regardless of the employee's actual expenses. If TQSE is reimbursed according to the fixed amount method, the agency is prohibited from making any extensions to the TQSE period and the employee will receive no additional reimbursement if the fixed amount does not cover his actual expenses. 41 CFR 302-6.200 to 6.202 (2010). The regulation at issue here is JTR C5384 (2010), which states that "TQSE(F) is a lump-sum payment based on the new PDS locality per diem rate in effect when the TQSE(F) offer is accepted by the employee. The lump-sum payment amount is not changed by any PDS per diem rate change after the employee accepts the offer."

The AFFSC argues that because Mr. Lutrell accepted the TQSE(F) offer on February 1, 2010, during the winter season, the above-quoted regulation requires that he be given the Eielson per diem winter rate, despite the fact that Mr. Lutrell would be traveling in the summer, when housing is substantially more expensive.

Mr. Lutrell stated that it had been explained to him that because he was traveling during the summer, he would receive the summer rate. The estimate of the amount of TQSE he would be receiving (set forth in his orders) was based on the summer rate for Eielson that was in effect on February 1, 2010, when he accepted the fixed rate. However, AFFSC did not honor the interpretation and estimate AFETS provided to Mr. Lutrell, but paid him only the fixed rate that was applicable for winter because that was when he accepted the offer. We note that if AFFSC's interpretation of the applicable regulation is correct, Mr. Lutrell's claim must fail. Erroneous advice provided by government officials cannot provide a basis for reimbursement where no independent authority for such reimbursement exists. *Joel Williams*, GSBICA 16437-RELO, 04-2 BCA ¶ 32,769.

Under the circumstances here, however, we agree with Mr. Lutrell's interpretation. As Mr. Lutrell points out, it would make no sense to reward people who sign up for fixed TQSE(F) in the more expensive season and travel in the less expensive one, while penalizing

those who sign in the less expensive season, but are not able to move until the more expensive season. In fact, such an interpretation defeats the very idea of rate tables.

The Defense Travel Management Office (DTMO) has a section devoted to “Per Diem Rates,” which notes that the General Services Administration (GSA) “updates the Continental U.S. rates once a year, or as necessary,” although the rates are normally updated at the start of the fiscal year. See <http://www.defensetravel.dod.mil/site/perdiem.cfm>. The DTMO also notes that the State Department “prescribes rates for foreign overseas locations and updates these rates at the beginning of every month.” *Id.* JTR C5384 makes sense if it is used to freeze the per diem rate at the rate applicable when the employee accepts the fixed rate option, so that the assigned TQSE cannot be affected by any rate changes by the GSA or the State Department after that time. It makes little sense to hold an employee to a per diem rate applicable for the winter when the employee will be traveling in the summer.

The JTR section that outlines TQSE procedures is seventeen pages long and is filled with multiple examples intended to demonstrate how TQSE should be calculated. None of these examples addresses or supports AFFSC’s position. JTR C5350-5392. However, in JTR section C5382, “Authority,” there is a subsection outlining considerations for authorizing TQSE(F). Under that subsection is a paragraph, “Administrative Ease,” which states that “no review of claims, receipts, and supporting statements, for the validity, accuracy, and reasonableness of each expense amount is required for TQSE(F) because receipts and supporting statements are not required.” JTR C5382-B.5. If administrative ease is a key factor in favor of utilizing TQSE(F), it makes even less sense to pay employees based on the season in which they signed, instead of the season they traveled. Such a policy could lead to employees declining TQSE(F) for the more administratively burdensome “actual expenses,” if they were required to accept a fixed rate at the time of signing that was lower than the rate that would be applicable at the time of travel.

We conclude, therefore, that the agency should have applied the per diem rate applicable for the season in which Mr. Lutrell traveled that was in effect on the day Mr. Lutrell accepted the fixed rate offer.

Decision

Mr. Lutrell’s claim is granted. Mr. Lutrell is entitled to TQSE(F) for thirty days at seventy-five percent of the summer rate for Eielson that was in effect on the date that he accepted the fixed rate offer.

BERYL S. GILMORE
Board Judge

