



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 19, 2011

CBCA 2311-RELO

In the Matter of SAM TYSON, JR.

Sam Tyson, Jr., Beaufort, SC, Claimant.

Sheila Melton, Director, Travel Functional Area, Standards and Compliance, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

VERGILIO, Board Judge.

The claimant lacked authorization to be reimbursed for temporary lodgings and expenses when he incurred costs in connection with a permanent change of duty station. Purported subsequent authorization does not permit payment when regulation expressly requires authorization at the time costs are incurred.

On May 13, 2010, individuals at a naval station in Spain finalized an authorization for the claimant, Sam Tyson, Jr., a Department of Defense civilian employee, for a permanent duty change of station. The claimant relocated from that naval station to the Marine Corps Air Station in Beaufort, South Carolina, with a reporting date of June 20, 2010. On the authorization, a checked box indicates that temporary quarters subsistence expenses (TQSE) are not authorized; accordingly, the number of days authorized is left blank. The remarks section states that the travel authorization may be amended by the gaining activity and notes that expenses/charges not allowed at Government expense are the financial responsibility of the employee. The section also states: "Gaining activity is authorized to amend these orders per JTR [Joint Travel Regulations] authorizations with the concurrence of losing activity."

At the new duty station, the relocated claimant rented a hotel room for thirty-three days as temporary quarters. At the time of his arrival, in response to his oral inquiry if he could be reimbursed for his hotel room, the deputy comptroller replied affirmatively; however, the record does not suggest that the deputy comptroller was authorized to alter the travel authorization. In accordance with instructions, he submitted an itemized claim for

lodging and expenses with receipts for lodging and laundry. The agency initially denied payment of the claimed TQSE because the claimant lacked authorization for reimbursement.

Subsequently, on September 28, 2010, the commanding officer at the Marine Corps Air Station Beaufort issued a modification to the claimant's travel order specifically authorizing actual expense TQSE for thirty days. This purported modification does not expressly indicate an attempt to make it effective before the date of issuance, and does not indicate concurrence of the losing activity. During the internal appeal process, the deputy comptroller of the Marine Corps station recommended payment of the TQSE, with the following explanation:

It has been the policy of this Command to pay TQSE expenses, not to exceed thirty days, for individuals returning to this Command from an OCONUS [outside the continental United States] duty station. Normally a line of appropriation and document number for TQSE and miscellaneous expenses are provided to the losing activity for citation on the employee's orders. This did not happen in this case and it was not until the employee attempted to settle the orders that it was discovered that TQSE had been marked as not authorized. As soon as the error was discovered action was taken to modify the orders. The agency denied reimbursement, explaining that the applicable Joint Travel Regulations (JTR), C5352-D.2, specify that travel authorization must exist at the time the lodging is occupied and may not be authorized retroactively.

The agency denied the reimbursement of TQSE because claimant lacked authorization at the time the costs were incurred. The claimant here seeks payment of \$5507.75 for TQSE for thirty days, disputing the agency's denial.

The applicable Federal Travel Regulation (FTR) expressly addresses the circumstances under which an employee will receive a TQSE allowance. One element is that the "agency authorized it before you occupy the temporary quarters (the agency authorization must specify the period of time allowed for you to occupy temporary quarters)[.]" 41 CFR 302-6.7 (2010) (FTR 302-6.7).

The directly applicable provision of the JTR contains more detail in a section on restrictions and TQSE authorization: "TQSE must be authorized **before** temporary lodging is occupied and **may not be approved after the fact for any days that have passed before TQSE is initially authorized (FTR §302-6.7) except that extensions may be approved IAW [in accordance with] par. C5364-B2.**" JTR C5352-D.2.

The agency properly concluded that the claimant was not authorized to be reimbursed for TQSE for the period in question. The claimant occupied temporary quarters with an authorization that did not permit TQSE reimbursement. The lack of authorization is not erroneous on its face; TQSE reimbursement is discretionary. An oral assurance by the deputy comptroller does not constitute a change in the authorization. The purported modification of the authorization does not assist the claimant. It lacks a statement that the amended authorization is to apply prior to the date of issuance. It has no concurrence from the losing agency. It lacks support for the conclusion that TQSE was previously determined and definitely intended but had been inadvertently omitted in the preparation of the original authorization.

This result is dictated specifically by the language of the regulations cited above and by general principles that have arisen through case law regarding the increase or decrease of rights which have become finalized after travel is performed. *Donald N. Striejewske*, CBCA 2029-RELO, 10-2 BCA ¶ 34,469.

The Board denies the claim.

JOSEPH A. VERGILIO
Board Judge