



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 9, 2014

CBCA 3687-RELO

In the Matter of ANNA M. SANTANA

Anna M. Santana, APO Area Europe, Claimant.

Deborah Muldoon, Office of the Staff Judge Advocate, Scott Air Force Base, IL, appearing for Department of the Army.

SHERIDAN, Board Judge.

Claimant, Anna M. Santana, a civilian employee with the Department of the Army, asks the Board to award her \$18,080.40 in storage in transit (SIT) and temporary quarters subsistence allowance (TQSA) expenses she incurred as a result of back-to-back permanent change of station (PCS) moves. The claim is denied because claimant requested and received reimbursement for the maximum number of days allowed by statute and regulation for SIT and TQSA, and both the agency and the Board lack authority to grant PCS allowances beyond the amounts set by statute and regulation.

Background

In December 2011, claimant, who was employed by the Army Installation Management Command in Kaiserslautern, Germany, was selected for a position with the Military Surface Deployment and Distribution Command (SDDC) in Stuttgart, Germany. The vacancy announcement indicated that PCS expenses were authorized, "subject to the provisions of the Joint Travel Regulations (JTR)." A travel authorization (TA) was processed establishing claimant's reporting date to SDDC as April 22, 2012. The TA authorized temporary storage of household goods (HHG), as well as other expenses not related to this claim. The TA stated: "[s]torage in transit (temporary storage of HHGs) is authorized NTE [not to exceed] 90 days at point of origin, destination, en route[,] or any combination [in accordance with] JTR Vol II C5190." Claimant was also authorized "TQSA not to exceed 90 days after arrival at OCONUS [outside the continental United States] PDS

[permanent duty station], [in accordance with] conditions, limitations, and rates set forth in the DSSR [Department of State Standardized Regulations], Sections 120 and 925.” The TA was amended on March 14, 2012, to revise claimant’s reporting date to April 8, 2012. According to the agency, based on the April 8, 2012, report date, both claimant’s initial SIT entitlement and TQSA entitlement would expire ninety days later, which was July 6, 2012.

Claimant’s HHG were placed in storage at origin and she proceeded to her new duty station in Stuttgart. Upon arrival, claimant arranged to stay at SI-Suites in a long-term rental agreement. Soon after her arrival, claimant was informed of SDDC’s plans to relocate the office to Sembach Kaserne, Germany, in October 2012.

As it became apparent to claimant that her SIT and TQSA entitlements arising from the April move would not extend to SDDC’s office relocation date, she discussed this issue with, and requested guidance from, her supervisor and the SDDC personnel office. As a result of those discussions, claimant requested and was granted extensions to her SIT and TQSA entitlements. Claimant’s TA was amended on November 9, 2012, authorizing an additional ninety days SIT and stating that the total maximum allowed number of days (180 days) was authorized in accordance with the JTR. The TA was also amended to authorize an extension of sixty days of TQSA, for a total of 150 days of TQSA, stating that “this extension authorizes the total maximum allowed of 150 days in accordance with DSSR Section 122.2.” These extensions allowed claimant to claim SIT expenses through October 4, 2012, and TQSA through September 4, 2012.¹

The office relocation was delayed several times and eventually occurred in January and February 2013. Claimant received, on January 31, 2013, a TA directing her to travel to Sembach Kaserne, Germany, with a report date of February 10, 2013. Although the record does not so state, it appears that claimant remained in temporary quarters and kept her HHG in storage until after SDDC’s office relocation occurred.

On December 13, 2013, claimant presented a claim to SDDC seeking \$18,080.40 for “out-of-pocket expenses,” including \$15,430.82 for temporary lodging and meals, \$172.30

¹ Claimant also explored other options for extensions for her SIT and TQSA entitlements once she became aware that the entitlements would not cover the total amount of time for SDDC’s relocation. Regarding living expenses, claimant was advised as early as August 2012 that when her TQSA entitlement expired, she could be authorized a living quarters allowance (LQA) if certain requirements were met. Claimant pursued an LQA application, but LQA was rejected because claimant’s hotel agreement could not be modified to meet stringent requirements in DSSR 131.2 for a LQA.

for laundry, \$991.87 in hotel parking fees, and \$1485.41 in HHG storage costs. These sums represent the expenses claimant incurred beyond the dates authorized by her amended TA.

On December 23, 2013, SDDC's Deputy to the Commander denied claimant's request. Claimant pursued an exception to policy (ETP) to extend her SIT entitlement, but an Army Civilian Advisor Panel (CAP) assigned to consider the matter determined that the request could not be considered because the JTR only authorizes such an extension when relocation is interrupted by a temporary assignment to Afghanistan or Iraq.

Arguing that "it is unjust that I be penalized for getting caught-up between moves due to poor planning on management's part," claimant asks the Board to order the agency to reimburse her an additional \$18,080.40 for the expenses she incurred.

Discussion

The decision in this case is straightforward. Agencies and the Board are without authority to order the payment of travel or relocation expenses beyond those granted by statute or regulation, and claimant has been paid for the maximum number of days allowed by statute and regulation.

The applicable Federal Travel Regulation (FTR) states the following:

302-7.9 What are the time limits for the temporary storage of authorized HHG shipments?

. . . .

(b) For shipments that include an OCONUS origin or destination. The initial period of temporary storage at Government expense may not exceed 90 days. You may request additional time, up to a maximum of 90 days, and you must make such a request prior to the expiration of the original 90 days. This extension must be approved by the agency official designated for such requests. *Under no circumstances may temporary storage for shipments at Government expense that include an OCONUS origin or destination exceed a total of 180 days.*

41 CFR 302-7.9 (2012) (emphasis added).

The JTR, which are also applicable in this case, provide the following:

SIT ([in connection with] authorized HHG transportation) should not exceed . . . 90 (to/from OCONUS) days unless the employee requests (in writing) an

additional period, [not to exceed] 90 days, that is authorized/approved by a Service/Defense AGENCY designated official. . . . If no additional storage is authorized/approved, the employee is financially responsible for the additional storage expense (FTR § 302-7.9).

JTR C5190-B.1. The JTR further provide that “[o]nly in very limited circumstances can SIT be authorized beyond . . . 180 days . . . (i.e., when the maximum SIT period is insufficient for an employee on a PCS that is interrupted by an en route TDY assignment to a location such as Afghanistan or Iraq).” JTR C5191-B (citing *Stephen F. Fischer*, CBCA 875-RELO, 08-1 BCA ¶ 33,771).

In *James L. Thomas II*, CBCA 2035-RELO, 10-2 BCA ¶ 34,570, the Board rejected an argument similar to the one claimant makes here when we concluded that the claimant’s circumstances did not meet “the only limited circumstances” that allowed for SIT reimbursement beyond 180 days -- a PCS move interrupted by a TDY assignment to a location such as Afghanistan or Iraq. Here, claimant decided to keep her HHG in storage rather than unpack and re-pack them during the short period between her arrival at Stuttgart and the relocation of her office to Sembach Kaserne. While the decision to keep her HHG in storage might have seemed reasonable to claimant, claimant requested and received the maximum entitlement for SIT allowed by statute and regulation. Neither the agency nor the Board may enlarge claimant’s rights beyond those contained in statute and regulation. *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384-85 (1947); *Thomas A. Gilbert*, CBCA 2214-RELO, 11-2 BCA ¶ 34,786; *Terry L. Cline*, CBCA 861-RELO, 08-1 BCA ¶ 33,736 (2007).

Similarly, claimant’s entitlement to additional TQSA is limited by statute and regulation. The Overseas Differentials and Allowances Act authorizes agencies to pay to employees who are stationed abroad but not provided Government quarters without charge “[a] temporary subsistence allowance for the reasonable cost of temporary quarters (including meals and laundry expenses) incurred by the employee and his family . . . for a period not in excess of 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.” 5 U.S.C. § 5923(a)(1)(A) (2012). This period “may . . . be extended for not more than 60 additional days if the head of the agency concerned or his designee determines that there are compelling reasons beyond the control of the employee for the continued occupancy of temporary quarters.” *Id.* § 5923(b). The authority to issue regulations implementing this Act has been delegated by the President to the Secretary of State. 5 U.S.C. § 5921 app. at 1071-72. The Secretary of State has exercised this authority by promulgating sections 120 through 129 of the DSSR, which label the allowance provided by statute as TQSA. The JTR use the DSSR to establish TQSA entitlements. JTR C1255, C1260.

Section 122 of the DSSR restates the time limitations for TQSA which are contained in statute:

122 Scope

122.1 Purpose

The temporary quarters subsistence allowance is intended to assist in covering the average cost of adequate but not elaborate or unnecessarily expensive accommodations in a hotel, pension, or other transient-type quarters at the post of assignment, plus reasonable meal and laundry expenses for a period not in excess of 90 days after first arrival at a new post of assignment in a foreign area, ending with the occupation of residence quarters if earlier, or 30 days immediately preceding final departure from the post following necessary vacating of residence quarters.

122.2 Extension

The 90 and 30 day temporary quarters subsistence periods may be extended up to but not more than an additional 60 days in each case if it is determined by the head of agency that compelling reasons beyond the control of the employee require continued occupancy of temporary quarters.

Claimant requested and received an extension for a total of 150 days of TQSA. As such, claimant was granted the maximum number of days of TQSA allowed by statute and regulation. As discussed above, both the agency and the Board lack authority to grant travel or relocation allowances beyond the amounts set by statute and regulation.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge