UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 10, 2014

CBCA 3854-RELO

In the Matter of PEGGY L. CLEVENGER

Peggy L. Clevenger, Williamsburg, VA, Claimant.

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

SHERIDAN, Board Judge.

Claimant, Peggy L. Clevenger, contests the decision made by Defense Finance and Accounting Service (DFAS) to deny her claim for reimbursement of temporary quarters subsistence expenses (TQSE) incurred prior to November 25, 2013, the date on which written orders authorized TQSE. Claimant is entitled to be reimbursed TQSE for the period preceding the issuance of the November 25 orders, because the orders were issued to correct an agency-acknowledged error in earlier orders that mistakenly denied claimant TQSE for her permanent change of station (PCS) move.

Background

Claimant, a civilian employee of the Department of the Army (Army), was issued PCS authorization on September 23, 2013, to relocate from the United States Army Garrison (USAG) in Vicenza, Italy, to the Military Surface Deployment and Distribution Command (MSDDC) at Fort Eustis, Virginia. The TQSE box on her DD 1614 orders form was marked "no" and the number of days was left blank. The orders indicate that a service agreement was signed by claimant on September 19, 2013.

Recognizing that it had made a clerical error with regard to the TQSE, the releasing station, as early as October 30, 2013, began communicating the need and its intent to modify the September 23 authorization to include allowances for TQSE and miscellaneous expenses.

Claimant's report date at Fort Eustis was November 8, 2013. Claimant entered into temporary quarters at her new duty station on that date without receiving amended orders.

Sometime after claimant reported to her new duty station, the gaining agency began to work on amending claimant's orders to authorize TQSE. This was complicated and delayed because the original September 19 service agreement could not be located.[1] Claimant's orders were subsequently modified on November 25, 2013, to authorize sixty days of actually-incurred TQSE.

Claimant was reimbursed TQSE expenses from November 25, 2013, to January 6, 2014. However, DFAS concluded claimant was not entitled to TQSE for November 8 through November 24, 2013, because the November 25 modification did not provide that the authorization applied prior to the issue date, nor did it mention that TQSE was previously determined appropriate and intended but was inadvertently omitted from the September 23 authorization.

Discussion

The facts reveal that, from at least October 30, 2013, the Army realized that it had made a clerical error when it checked "no" in the TQSE box on the September 23 authorization. It wanted to correct this mistake but was unable to modify the authorization until November 25, 2013. The November 25 authorization was the Army's attempt to properly authorize TQSE for claimant's PCS move.

The Federal Travel Regulation (FTR) addresses the circumstances under which an employee will receive a TQSE allowance:

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[1] Communications between the releasing station and the gaining station reveal that the September 19 service agreement could not be located. It appears that claimant was instructed to re-sign and back-date the service agreement. Apparently, claimant followed those instructions. The service agreement executed by claimant now shows a date of September 25, 2014. According to DFAS, claimant did not actually sign the service agreement dated September 25 until several months after she entered into temporary quarters at the new duty station.

> You will receive a TQSE allowance if:
>
> (a) Your agency authorizes it before you occupy the temporary quarters (the agency authorization must specify the period of time allowed for you to occupy temporary quarters);
>
> (b) You have signed a service agreement; and
>
> (c) You meet any additional conditions your agency has established.

41 CFR 302-6.7 (2013).

DFAS took the position that under Joint Travel Regulation (JTR) C5352-D2, "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-B."

While the FTR provides that TQSE must be authorized before an employee occupies temporary quarters and must specify the period of time authorized, there is room here to retroactively correct the September 23 authorization to date back to the time the claimant began incurring TQSE, November 8, 2013. Travel orders may be amended retroactively in limited circumstances, including but not limited to when (a) there is an error on the face of the orders, (b) the orders do not conform to applicable statutes and regulations, and (c) "the facts and circumstances surrounding the issuance of an authorization clearly demonstrate that some provision which was previously determined and definitely intended to be included was omitted through error or inadvertence in preparing the authorization." *Diane F. Stallings*, GSBCA 16793-RELO, 06-1 BCA ¶ 33,201; *see also Stephen S. Talbot*, GSBCA 16507-TRAV, 05-1 BCA ¶ 32,848 (2004); *Brian P. Byrnes*, GSBCA 14195-TRAV, et al., 98-1 BCA ¶ 29,535.

A common sense consideration of the record clearly establishes that by issuing the November 25 authorization the agency was attempting correct its mistake in omitting TQSE authorization from the September 23 document. The November 25 authorization only addresses TQSE and miscellaneous expenses, and as we see it, was a supplementation of the original September 23 authorization and meant to apply to the same period. Even though the September 19 service agreement could not be located, the September 23 authorization indicates it had been signed, so claimant had taken the appropriate steps to be paid TQSE. Under the circumstances here, where the agency was attempting to correct a clerical error in

the original authorization, it makes no sense for DFAS to apply the signing date of the amending authorization to limit claimant's recovery of TQSE.

Decision

The claim is granted. Claimant is entitled to reimbursement of actually-incurred TQSE and miscellaneous expenses from November 8 through November 24, 2013.

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PATRICIA J. SHERIDAN
Board Judge