



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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July 29, 2014

CBCA 3712-RELO

In the Matter of DEBRA K. ARMSTRONG

Debra Kaylynn Armstrong, Alexandria, VA, Claimant.

Deborah A. Hartman, Director for Human Resources, Defense Intelligence Agency, Washington, DC, appearing for Defense Intelligence Agency.

**WALTERS**, Board Judge.

In October 2012, claimant, Debra K. Armstrong, transferred from the Federal Bureau of Investigation in Boston, Massachusetts, to the Defense Intelligence Agency (DIA) in Washington, D.C. She had been authorized certain relocation related benefits in connection with her permanent change of station (PCS) including, among other items, reimbursement for a house-hunting trip and the provision of temporary quarters subsistence expenses (TQSE) of up to sixty days. Ms. Armstrong had received \$655.12 in connection with the house-hunting trip (HHT), but because she never returned to Boston (her previous permanent duty station (PDS)) after completing her house-hunting, instead remaining in the D.C. area, it was determined that HHT reimbursement was inappropriate. Under those circumstances, per the regulations,<sup>1</sup> Ms. Armstrong effectively was reimbursed for her HHT-related costs with the first ten days of TQSE reimbursement. As she was paid for both HHT and TQSE,

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<sup>1</sup> The Joint Travel Regulations (JTR), applicable to civilian employees of the Department of Defense, such as the claimant, provide that when an employee does not return to her "old PDS" upon completion of the HHT, then TQSE, if authorized, would be "payable in lieu of house-hunting subsistence for the days spent seeking permanent housing up to the day before reporting for duty at the new PDS." JTR C5630.

the agency requested that she refund the \$655.12 in HHT reimbursement, and she did so. Although her appeal to this Board initially indicated that she was contesting the request for that refund, Ms. Armstrong has since stated that she no longer is pursuing that aspect of her claim. Rather, at this stage, her claim is confined to the amount of TQSE reimbursement she had been afforded and to the nearly \$6000 she was not permitted to recover for lodging, meals and incidental expenses, since the amounts she incurred for such costs exceeded the limitations imposed by the regulations. For the reasons explained below, we find that the agency was correct as to the amounts paid claimant for TQSE.

### Discussion

Claimant's travel authorization permitted her to receive TQSE reimbursement on an actual expense basis (TQSE(AE)) for up to sixty days. Although she was advised by agency personnel that she would be allowed reimbursement for lodging, meals, and incidental expenses up to the per diem rate in effect for the Washington, D.C., area, i.e., \$297/day, the regulations only permit TQSE reimbursement for actual costs expended up to the standard continental United States (CONUS) per diem rate, which in October 2012 was \$123/day. In this regard, JTR C5360 provides for the reimbursement of TQSE(AE) for "any CONUS locality" based on the standard CONUS per diem rate, and only allows for reimbursement up to the "PDS locality per diem rate" for a new PDS that is outside the continental United States (OCONUS):

General. TQSE(AE) is an actual expense allowance based on the:

1. \$123 Standard CONUS per diem rate for temporary lodging occupied in any CONUS locality (effective 1 October 2010), or
2. PDS locality (not the lodging location) per diem rate for temporary lodging occupied in OCONUS localities.

Similarly, the Federal Travel Regulation (FTR) makes clear that, for TQSE(AE) reimbursement, the "applicable per diem rate" for temporary quarters for any CONUS location is the standard CONUS rate, and that only in cases of reimbursement for temporary quarters located OCONUS will the "applicable per diem rate" be the "locality rate established by the Secretary of Defense or the Secretary of State" for the new PDS locality. 41 CFR 302-6.102. Though claimant here alludes to a lack of familiarity with all of the provisions of the applicable travel regulations, it is well settled that an employee subject to the FTR and JTR is responsible for knowledge of those regulations. *Gary Wayne Littlefield*, CBCA 3826-RELO (July 10, 2014) (citing *Jeffrey L. Troy*, GSBICA 16072-RELO, 03-2 BCA

¶ 32,329 (an employee's lack of knowledge of the applicable regulations will not justify reimbursement for expenses that are not authorized)).

TQSE will not necessarily be sufficient to cover all expenses of temporary lodging, meals and incidental expenses that an employee may incur. Indeed, the JTR provides that, for any period of TQSE eligibility, "TQSE(AE) reimbursement is for the **lesser of the actual allowable expenses** incurred for each day of the prescribed period **or the maximum allowable amount payable.**" JTR C5370-A (emphasis added). Moreover, the JTR makes plain that any excess expenses beyond the maximum allowable are to be borne by the employee: "Excess Expenses. Allowable expenses exceeding the total authorized TQSE(AE) amount are the employee's financial responsibility." JTR C5370-C.

In *Andrew K. Moghrabi*, GSBCA 16335-RELO, 04-2 BCA ¶ 32,679, one of our predecessor boards, the General Services Administration Board of Contract Appeals (GSBCA), dealt with an employee who relocated from Portland, Oregon, to San Francisco, California, a high cost area similar to D.C. In that case, per the regulations, the agency limited reimbursement for TQSE(AE) to the then-standard CONUS per diem rate, which was \$85 per day, even though the employee found that, just for the hotel he had to stay in, he was required to pay \$138.50 per day. The board there denied the employee's claim to \$2621.56 in excess expenses beyond that allowed by the agency as TQSE, observing:

As the TQSE(AE) allowance is based on specific per diem rates [i.e., the \$85 standard CONUS per diem rate for temporary quarters occupied in all CONUS localities], it will not compensate the employee for all actual expenses incurred if the employee's expenses exceed the amount allowed.

04-2 BCA at 161,729; *see also Ricky E. Wood*, GSBCA 15110-RELO, 00-1 BCA ¶ 30,752 (board found, in terms of TQSE reimbursement, that the Air Force was "correct in using the standard CONUS rate, rather than the locality rate for Davis County, Utah" for an employee who had transferred from Okinawa to Hill Air Force Base, Utah). The same result, unfortunately for claimant, must occur in this case. This is so, notwithstanding that claimant received incorrect advice from the agency and finds herself unable to collect some \$6000 in excess expenditures that she had expected to recover. In this regard, our Board in *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634, at 166,580, stated: "The Government is not bound by the erroneous advice of its officials, even when the employee has relied on this advice to his detriment. *E.g., John J. Cody*, GSBCA 13701-RELO, 97-1 BCA ¶ 28,694 (1996)." We also have observed:

Only expenses authorized by statute or regulation may be reimbursed, because allowing an agency to make a payment in the absence of such authority would

violate the Appropriations Clause of the Constitution. The Supreme Court consequently has made clear that an executive branch employee's promise that the Government will make an "extrastatutory" payment is not binding. *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947); see *Bruce Hidaka-Gordon*, GSBCA 16811-RELO, 06-1 BCA ¶ 33,255; *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900.

*Ramsey D. Lockwood*, CBCA 3556-RELO, 14-1 BCA ¶ 35,560, at 174,248 (quoting *Bradley P. Bugger*, CBCA 555-TRAV, 07-1 BCA ¶ 33,579, at 166,342). Here, the amounts of additional expenses claimant is seeking simply exceed the amounts authorized by statute or regulation.

### Decision

The claim is denied.

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RICHARD C. WALTERS  
Board Judge