



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 18, 2015

CBCA 4231-RELO

In the Matter of ANNETTE M. ZAPF

Annette M. Zapf, FPO Area Pacific, Claimant.

Major Michelle L. Over, Marine Corps Installations Pacific, United States Marine Corps, FPO Area Pacific, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

The Department of the Navy transferred Annette M. Zapf from Italy to Okinawa, Japan, in February 2014. In doing so, the agency authorized payment of a temporary quarters subsistence allowance (TQSA) after her arrival in Okinawa. Ms. Zapf objects to the limitations the agency has placed on the amount of her TQSA.

Background

Ms. Zapf and her husband arrived in Okinawa on February 21. They stayed at Westpac Lodging from February 21 to March 3, and then at commercial hotels from March 4 to 24. The period for which she seeks TQSA began on February 24 and ran for thirty days.

Her orders have a single line regarding this benefit: "Temporary Quarters Subsistence Allowance (TQSA) after arrival in OKINAWA is authorized." On February 24, at the agency's request, she signed the following statement:

All employees who do not stay at Government temporary quarters must provide a nonavailability statement from the WEST PAC INN [evidently, the same entity as Westpac Lodging] before starting the TQSA process.

I understand that the nonavailability statement is required for claiming lodging expenses from non-Government temporary quarters. I further understand that if I desire to stay in non-Government temporary quarters without obtaining the non-availability statement from the WEST PAC INN, I will be responsible to borne [sic] any amount beyond the government rate.

In signing the statement, Ms. Zapf added, “Dispute; will address with GSA Contract Board of Appeal.”

Ms. Zapf did not submit a non-availability statement from Westpac Lodging for the days on which she and her husband stayed in hotels, and she acknowledges that she does not have such a statement. The cost of rooms at the hotels was somewhat greater than the cost of rooms at Westpac Lodging.

The agency has shown that it paid a TQSA to Ms. Zapf for the days during which she stayed at Westpac Lodging. The record is not clear as to whether the agency paid a TQSA to her for the days during which she stayed at hotels.

Ms. Zapf’s principal dispute with the agency’s position is that she believes that her TQSA should be limited by the established maximum lodging rate for government employees who travel to Okinawa on official business, not the rate at Westpac Lodging.

Discussion

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. Exec. Order No. 10,903, § 2, *reprinted as amended in* 5 U.S.C. § 5921 app. The Secretary of State has exercised this authority by promulgating sections 120 through 129 of the Department of State Standardized Regulations (DSSR), which label the allowance provided by statute as TQSA. The Department of Defense’s Joint

Travel Regulations (JTR) expressly provide that that Department follows the TQSA rules established in the DSSR. JTR C1255; *William P. McBee, Jr.*, CBCA 943-RELO, 08-1 BCA ¶ 33,760.

The DSSR includes a section, DSSR 125, regarding determination of TQSA rates. It provides, in pertinent part, as follows:

The rate at which the temporary quarters subsistence allowance may be granted shall be the total amount of the reasonable and necessary expenses for the employee and family members for meals, including tax, service charges and tips, laundry/dry cleaning and temporary lodging (including room and bath, heat, light, fuel, water and the cost of service fees and taxes imposed by the management or local government upon the occupant during the period or periods allowed by Sections 123 and 124) or the total of the maximum rates for such period or periods, whichever is less.

This rate is not required to be the same rate prescribed for employees who travel on temporary duty assignments. Thus, the rules established for official travel, such as JTR C2550-2 (“An employee may not be . . . [l]imited to the GOV’T QTRS cost for lodging reimbursement”), and our decisions regarding official travel, such as *Leland G. Newport*, CBCA 2291-RELO, 11-1 BCA ¶ 34,746, and *Harry John Halverson*, CBCA 2551-TRAV, 11-2 BCA ¶ 34,878, do not apply to TQSA. Ms. Zapf’s contentions to the contrary are not correct.

The commanding general of the Marine Corps base to which Ms. Zapf was assigned has directed that:

The Temporary Quarter[s] Subsistence Allowance (TQSA) [is] designed to cover substantially all average allowable costs for suitable, adequate quarters, including utilities. [It is] not intended to reimburse 100 percent of all employees’ quarters costs or to provide ostentatious housing or extravagant meals. . . . Employees who use non-government lodging must provide a non-availability statement from the WESTPAC Lodge. Failure to comply with this order will result in the termination of the allowance.

Ms. Zapf has given us no reason to believe that lodging at Westpac does not meet the DSSR standard of “adequate but not elaborate or unnecessarily expensive accommodations” necessary for TQSA recipients. Consequently, we find that limiting the lodging portion of TQSA at this location to the rate charged by Westpac is reasonable.

We do have a concern, however, about an inconsistency between the general's directive and the TQSA form the agency required Ms. Zapf to sign. The directive says that failure to provide a non-availability statement from Westpac "will result in the termination of the allowance." The form, on the other hand, says that an employee who fails to provide such a statement "will be responsible to borne [sic] any amount beyond the government rate." The form's understanding of TQSA is consistent with the purpose of the allowance. Although placing a cap on the daily amount is appropriate, denying any recovery for TQSA during an authorized period is not. If the agency has not already provided TQSA to Ms. Zapf for the days during which she stayed in a hotel, it should do so now, limiting payment for accommodations to the daily rate for lodging at Westpac.

Ms. Zapf also complains that the agency evaluated her TQSA voucher on a day-by-day basis, rather than over a thirty-day period, and thereby refused to make payment in an amount above the daily rate for each of the few days on which she incurred greater expenses for meals. As she points out, DSSR 125 contemplates that all documented expenses for a thirty-day period (or lesser period, if that is all that is authorized) are to be compared to the daily rate times the number of days in the period, and the lesser of the two totals is to be paid to the employee.

STEPHEN M. DANIELS
Board Judge