



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 31, 2017

CBCA 5664-RELO

In the Matter of LONNIE G. JABOUR

Lonnie G. Jabour, APO Area Pacific, Claimant.

Kevin M. Wright, Chief, Support Operations Branch, Logistics Assistance Division, Department of the Army, Aberdeen Proving Ground, MD, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant, Lonnie G. Jabour, is a civilian employee of the Department of the Army. He has asked this Board to review the agency's denial of reimbursement of his meal expenses that he allegedly incurred during his permanent change of station (PCS).

Factual Background

Claimant was issued orders in August 2016 for a PCS from Fort Carson, Colorado, to Seoul, Korea. Upon completion of his transfer, he submitted his travel voucher for reimbursement of various costs incurred for temporary quarters subsistence allowance (TQSA). The agency reimbursed claimant for travel expenses and lodging, but denied reimbursement for meals expenses. The agency official responsible for reviewing and approving the travel voucher believed the costs listed by claimant on the travel voucher for meals were excessive and questioned whether these costs had actually been incurred. The agency official stated in a memorandum dated December 20, 2016:

While studying the meal . . . claims . . . the meal variance between each day was extremely slight and the total daily claims were conveniently and suspiciously close to the maximum authorized amount that lead me to suspecting a possible "tainted" voucher.

When I pulled the employee's travel card statements for the months of July through October 2016, there wasn't a single meal charge or cash withdrawal transaction to substantiate the meal/laundry claims.

I noticed the exact same pattern on his previous TQSA #1 claim and his maximum authorized amounts were once again "max'd" out.

I am not comfortable with endorsing the entire TQSA submission based on the above reasoning however I don't want the employee's [government] travel card to fall into delinquent status so I am approving a partial reimbursement.

The agency official stated on claimant's two SF [Standard Form] -1190s: "As the approving official, I am ONLY approving hotel reimbursement charges . . . I am not NOT endorsing his meal claims as per the 'tainted rule' outlined in the JTR [Joint Travel Regulations].^[1]"

Claimant filed his request for review of the agency decision at this Board on February 15, 2017, stating in part:

[T]here is no regulation or directive that requires the use of a [government credit card] for meals during transition. All meals were paid in cash. The [government credit card] was used for travel and hotel expenses. . . . [T]he only requirement was to provide receipts for over \$75.00. While in Korea I averaged for the first 30 days \$44.53 daily for two adults and one eleven year old child. The second 30 days I averaged \$33.00 daily. Since no meal exceeded \$75.00 I did not obtain receipts. Korea is very expensive and DA Civilians are authorized 5% Post Differential and 5% Post Allowance in Area.

Claimant requests a review of the agency's denial of reimbursement of \$5134.59, the total of the amounts he listed for meals for the period July 27, 2016 - September 5, 2016.

In response to claimant's request for review to this Board, the agency official who denied reimbursement for meal charges filed a detailed response explaining why he questioned the meal charges, his interactions with claimant to attempt to ascertain if the

¹ Claimant notes that this rule is stated in JTR 5774(4), applicable to temporary quarters subsistence expenses, and not to TQSA. The case law cited herein applies the same principles of this "tainted rule" with regard to TQSA.

claimed costs had actually been incurred, and why he ultimately concluded that the charges lacked credibility and could not be reimbursed. He states in relevant part:

As the Chief of the Support Operations Branch of my Division, one of my roles and responsibilities of this position is to review and approve various documents such as TQSA . . . associated with a Permanent Change of Station (PCS) move. These documents require close scrutiny as a disbursement of funds [is] associated with each of them and this role I take very seriously as a steward of [government] resources.

I have held this position for 6 years and have reviewed several hundred of these claims over the course of my tenure. Our organization averages approximately 50 PCS moves a year of which my branch executes everything from the orders, amendments, and all subsequent claims. I have also personally PCS'd 5 times myself in my career so I am quite familiar with the authorizations and entitlements, the various associated forms and how to properly document such claims. In addition, I have a contractor that works for me who is considered not only my Branch's but the entire Command's 'Subject Matter Expert' (SME) on all actions involved with a PCS. I consult with him regularly as we process the various claims. In regards to Mr. Jabour's PCS claims, I had questions and concerns on every stage beginning with his stateside 10-day TQSA allowance as he was preparing to depart from his old duty station to this new duty station^[2]

Upon Mr. Jabour's arrival to his new duty station in Korea, he submitted his first 30 days of TQSA through my office and once again, the claim appeared excessive and each day was just under the maximum ceiling. . . . For example, on 27 Jul 16 Mr. Jabour claims he spent \$132.26 on food, the next day \$130.00 on food, the next day \$131.47 on food; every single day was consistently close in that 30-day time period in question. The amounts varied very little over these 30 days [;] an obvious pattern was easily detected. His amounts ALWAYS conveniently fell just under the maximum allowed amount. When his TQSA #2 period began on 26 Aug 16 and his maximum allowable amount was diminished . . . , Mr. Jabour's subsequent meal claims

² The agency official describes in detail his concerns with claimant's claimed expenses before claimant departed from the continental United States to Korea. These expenses are not the subject of the claim before this Board, as claimant only requests review of the meal costs portion of his TQSA claim.

also lessened and fell just shy of the new maximum authorized amount. For example, on 26 Aug his meal claim was \$107.55, next day \$106.97, next day \$107.02, next day \$108.00 etc. etc. once again displaying an obvious pattern of “max’ing out” his claim. There was no variation whatsoever in any of his meal claims. This is not the first time that I have encountered such a tactic and suspect it won’t be my last but by far this has been one of the most incredulous [sic].

I have processed other claims for employees of my organization that also PCS’d to Korea with the same number of dependents as Mr. Jabour and even to what is . . . considered a more expensive area than that of Mr. Jabour’s, and their claim not only paled in comparison to his but the meal amounts varied from day to day making the claim much more credible.

During the deliberation period of attempting to comprehend and digest Mr. Jabour’s TQSA claims #1 and #2, it was further complicated by his erroneously completed and approved Living Quarter’s [sic] Allowance (LQA) paperwork. His original filed form indicated himself and 3 dependents were living abroad with him in the Republic of S. Korea. Of course, the number of dependents not only determines your authorized housing amount but also defines the calculations of your TQSA maximum amounts. This took a considerable amount of time to straighten out as his paperwork was consistently contradictory in nature.

I was not able to approve Mr. Jabour’s claim for meal expenses because of his complete failure to provide any confirmation that he actually incurred such expenses. He was unable (or has been unwilling) to produce any receipts to substantiate the costs claimed. Moreover, his credit card statements for the 4-month period covering his PCS (July-Oct 2016) indicated that he did not use his Government Credit Card to pay for any of the more than \$5,000 in meals that he claimed he consumed. Mr. Jabour was not able to provide ANY credible contemporaneous documentation whatsoever of the expenses that he claimed. He has also yet to produce any personal credit card statements as well which possibly could’ve easily alleviated this impasse, instead opting to proceed down this route. Mr. Jabour’s stance that the DSSR [Department of State Standardized Regulations] form 240 FTA-Foreign Transfer Allowance Worksheet states that receipts are not required for his TQSA claim is completely counterintuitive to maintaining the integrity of the claim approval process and therefore compromises the protection of valuable [government] resources.

In conclusion, Mr. Jabour [’s] claim that he paid for all his food out of pocket without using any credit cards, without keeping any receipts, and without keeping any contemporaneous records is difficult to fathom. I don’t enjoy denying TQSA Claims, but Mr. Jabour’s account is simply not credible. Under these circumstances, I believe I did not have any choice but to deny a portion of Mr. Jabour’s claim. Mr. Jabour did not even attempt to comply with his obligation to support his claimed expenses. His actions at best were grossly negligent. As such, I would have been derelict in the performance of my duties if I had approved payment of such a claim.

Claimant submitted a statement that he would accept the decision of this Board, but he did not reply to the agency official’s allegations.

Discussion

“Congress has authorized agencies to pay a TQSA to employees in foreign areas who live in temporary quarters and are not provided Government owned or rented quarters without charge. The TQSA is to cover the reasonable cost of lodging, meals, and laundry expenses incurred by an employee and his or her family.” *Okyon Kim Ybarra*, GSBCA 15407-RELO, 01-1 BCA ¶ 31,334, at 154,762; *see* 5 U.S.C. § 5923(a)(1) (2012) (providing for “[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 of up to ninety days after their first arrival at a new foreign post).

“The President has delegated to the Secretary of State authority to issue regulations which implement statutes providing for overseas pay differentials and allowances, including TQSA.” *Ybarra*, 01-1 BCA at 154,762; *see* Exec. Order No. 10,903, § 2, *reprinted as amended in* 5 U.S.C. § 5921 app. Those regulations are set forth in the Department of State Standardized Regulations (DSSR), which “have the force and effect of law.” *Gordon D. Giffin*, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100, at 148,955.

Under DSSR 123.31(a), the employee is entitled during the first thirty days at a new foreign post to recover “a daily rate not in excess of 75% of the per diem rate listed for the foreign post in Section 925 of the Standardized Regulations (Government Civilians, Foreign Areas).” The employee, however, is not automatically entitled to recover the maximum daily lodging and meal amounts, but can only be reimbursed the “actual subsistence expenses incurred, which are reasonable in amount and incident to the occupancy of temporary quarters.” DSSR 125. “The rate at which the [TQSA] may be granted shall be the total amount of the reasonable and necessary expenses for the employee and family members for meals . . . , laundry/dry cleaning and temporary lodging . . . or the total of the maximum rates

for such period or periods, whichever is less.” *Id.*; see DSSR 123.3 (“amount of [TQSA] which may be reimbursed shall be the lesser of either the actual amount of allowable expenses incurred by the employee” or the maximum permissible percentage of applicable per diem).

As claimant is demanding payment from the Government, claimant has the burden of proving that he is entitled to reimbursement. *Randy C. Davidson*, CBCA 2044-RELO, 11-1 BCA ¶ 34,750; *Paul B. Garvey*, GSBCA 13658-RELO, 97-1 BCA ¶ 28,690 (1996). “The DSSR is very specific as to documentation necessary to prove that an expense was actually incurred.” *Ybarra*, 01-1 BCA at 154,763. “Evidence of the daily cost of meals, . . . shall be a certified statement by the employee.” DSSR 125.

While claimant is correct that the DSSR does not require an employee to pay for meals with a government credit card, the agency may still question expenses if it considers any costs “extravagant”³ or if the agency has other legitimate reasons to deny reimbursement.⁴ *David R. Bienvenue*, CBCA 4983-RELO, 16-1 BCA ¶ 36,286. As we explained in *Nhia Xiong*, CBCA 5464-RELO, 17-1 BCA ¶ 36,644, even though receipts are not required for meals that do not exceed \$75:

One exception to this rule permits an agency to challenge “extravagant” expenses. However, the agency must have some evidence to show that a claimant’s expenses are unreasonably high. See *Lynn A. Ward*, CBCA 2904-RELO, 13 BCA ¶ 35,276, at 173,152 (allowing agency to question costs

³ The Department of Defense (DOD) has issued its own instruction, DOD Instruction 1400.25, vol. 1250 (Feb. 23, 2012), providing that DOD officials are entitled to require receipts for meals “that they consider extravagant,” as follows:

Officials approving allowance claims may also require receipts for meals claimed under TQSA that they consider extravagant. If an employee fails to submit receipts, allowance payments will be suspended until supporting documentation is submitted. Officials approving allowance claims shall verify that amounts claimed are supported by receipts and will not approve payments that are not supported by documentation.

⁴ Claimant also alleges that he was only required to provide receipts for meals that exceeded \$75. As discussed herein, the agency may question an expense it believes to be extravagant and may seek information, such as receipts, credit card, automated teller machine (ATM), or bank statements, or other contemporaneous information that supports and justifies the expenses.

claimed based on audit averaging all other TQSA claims paid during same fiscal year to similar size families); *Donald Mixon*, GSBCA 14957-RELO, 00-1 BCA ¶ 30,606, at 151,117 (1999) (“If an agency is inclined to provide some reimbursement under these circumstances, it may, but is not required to, do so on the basis of statistical data that it deems appropriate for the area.”). Where an agency identifies no reason to question a claimant’s certified statements, makes no effort to investigate, or shows no evidence of fraud, it does not meet its burden. *See Ybarra*, 01-1 BCA at 154,763.

17-1 BCA at 178,463.

Thus, self-certification of TQSA meal amounts by executing the certified statement on the travel voucher does not dictate that in every instance the claimed amounts must be paid. Where an agency reasonably questions whether claimed expenses were actually incurred, a claimant will be reimbursed only if he establishes, through credible contemporaneous documentation, that the expenses were indeed incurred. *Miguel E. López*, CBCA 4960-RELO et al., 16-1 BCA ¶ 36,448; *Miriam E. Bolaffi*, CBCA 4029-RELO, 15-1 BCA ¶ 35,962.

In the instant case, the agency official who denied reimbursement of claimant’s claimed meal expenses described in a memorandum supporting the denial and in more detail in the agency’s submission to this Board why he believed the amounts claimed were unreasonably high and further questioned whether the amounts claimed were actually incurred. He also described his efforts to have claimant support the actual incurrence of the costs claimed. As the agency official describes, based on his experience and knowledge of the costs of meals in the locale, he questioned why claimant’s costs continuously were almost at the limit where receipts would have been required, and concluded that such costs were unreasonable and excessive. He was disturbed by claimant’s pattern of consistently charging almost the maximum allowable limit. Based on his experience of reviewing other, similar claims, the agency official found these amounts to be the most excessive he ever experienced, and questioned whether the costs claimed had actually been incurred.⁵ These were legitimate reasons for the agency to request additional evidence to support the costs claimed, even though claimant had signed the certified statement on his travel voucher. After the agency official made inquiries to claimant and received no contemporaneous documentation or any other convincing evidence that the costs had been incurred, the agency official denied the costs in their entirety.

⁵ While the agency official does not use the term extravagant, his use of the term “excessive” has the same meaning.

Claimant has failed to meet his burden of proof, in response to the the agency's inquiries with regard to his travel voucher and in response to the agency's assertions at this Board, that the costs claimed were actually incurred. He offered no rebuttal to the agency's detailed allegations of excessive costs claimed nor any contemporaneous evidence that the costs claimed had actually been incurred. Absent such proof, we uphold the agency official's conclusion that the costs were excessive, not supported or credible, and therefore not reimbursable.

Decision

The agency official's decision not to reimburse the meal costs claimed is affirmed. The claim is denied.

ALLAN H. GOODMAN
Board Judge