



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 31, 2017

CBCA 5446-RELO

In the Matter of LEE ETHEL EDWARDS

Lee Ethel Edwards, APO Area Europe, Claimant.

Ilona M. Keller, Human Resources Specialist, Civilian Personnel Directorate, Office of the Deputy Chief of Staff, Department of the Army, APO Area Europe, appearing for the Department of the Army.

O'ROURKE, Board Judge.

A claim for pre-departure subsistence expenses was denied by the agency due to a misinterpretation of the regulations governing payment of foreign transfer allowance (FTA). We grant the claim in part.

Background

Claimant, Lee Ethel Edwards, is a Department of the Army employee who was assigned to the Kingdom of Saudi Arabia in March 2016. Prior to assuming her current duties, she was stationed at Fort Campbell, Kentucky. Due to delays in her receiving the required diplomatic passport, claimant's reporting date to Saudi Arabia was changed from February 7 to March 6, 2016. Her permanent change of station (PCS) orders were amended to reflect that change.

In conjunction with her move overseas, claimant was authorized a pre-departure allowance to cover meals, temporary lodging, and laundry costs. Her PCS orders contained the following provision: "Foreign Transfer Allowance (FTA), Pre-Departure Subsistence Expense portion (DSSR 242.3) [not to exceed] 30 days for quarters occupied temporarily before departure from [continental United States] location for a [permanent duty station] in a foreign area." For travel to claimant's new duty station, all modes of transportation were

authorized: rail, air, and privately owned conveyance (POC). Any excess travel time to her new duty station would be charged as leave.

Claimant returned from a six-month deployment in Afghanistan on January 8, 2016. After completing redeployment processing at Fort Bliss, Texas, she flew to her permanent duty post at Fort Campbell, Kentucky, where she resided with friends until January 12, 2016, at which time she checked into temporary quarters at Fort Campbell in anticipation of her departure to Saudi Arabia. According to the FTA worksheets that claimant submitted to the agency, claimant spent twenty-three nights in temporary lodging, from January 12 through February 2, 2016, at Fort Campbell, as well as on March 5, 2016, in Jackson, Mississippi. Claimant's household goods were picked up on February 2, 2016, from a storage unit in Tennessee.¹ At that time, however, she had not received her official passport, and she was not permitted to travel without it. Due to her imminent reporting date of February 7, 2016, claimant's orders were amended on February 3, 2016, to allow for additional time to receive the passport. Her amended PCS orders reflected a new reporting date of March 6, 2016.

On or about February 3, 2016, claimant departed Fort Campbell by POC and traveled to Mississippi, where she remained on leave until she received her passport and departed for her new assignment.² Claimant departed the continental United States from Jackson, Mississippi, on March 6, 2016, and flew to Saudi Arabia.

On June 28, 2016, claimant submitted a claim under the FTA for twenty-three days of meals and lodging costs that she incurred in the United States prior to her departure to Saudi Arabia. The agency denied her claim due to the fact that she departed the United States from Jackson, Mississippi, rather than from her post (Fort Campbell, Kentucky), which the agency understood the regulations to require. Claimant's request for reconsideration was denied for the same reason.³

¹ The record shows that while claimant was deployed, her household goods were in temporary storage at Summerhaven Self Storage, in Clarksville, Tennessee.

² Although claimant was authorized thirty days of temporary lodging, she explained that she had reached the credit limit for lodging on her government travel card and departed temporary quarters after twenty-two days.

³ In accordance with the Board's Rules of Procedure, the agency submitted a written response to the claim. In its response, the agency noted a second basis for denying the claim: that claimant vacated her "permanent quarters" in a manner inconsistent with the regulations.

On August 18, 2016, claimant filed a request with the Board to review the agency's denial. The agency responded to the request with a more detailed explanation of its reasons for denying her FTA expenses, to which claimant replied with factual clarifications.

Discussion

Entitlement to FTA Expenses

The Department of State Standardized Regulations (DSSR) govern official travel overseas by federal civilian employees. The DSSR define the FTA as “an allowance under 5 U.S.C. 5924(2)(A) for extraordinary, necessary and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing him or herself at any post of assignment in a foreign area . . . prior to departure for such post.” DSSR 241.1(a). The FTA consists of four distinct components, one of which is pre-departure subsistence expenses. The regulation describes the scope of this component as “applicable to lodging, meals (including tips), laundry, cleaning and pressing expenses in temporary quarters for employee and each member of family for up to 10 days prior to final departure from a post in the United States to a post in a foreign area, beginning not more than 30 days after they have vacated residence quarters.” DSSR 241.2(c)

Additional guidance on pre-departure subsistence expenses can be found in DSSR 242.3(c). It states,

The ten days may be anywhere in the U.S. (calculated using the per diem rate of the U.S. Post of assignment) as long as employee or family members have not begun travel on orders and final departure is from the U.S. post of assignment. If in an agency's judgment unusual circumstances cause an employee or family member to be unable to travel within the ten day limit, the agency may permit additional days beyond the ten allowed. (One example of a reason to approve beyond the ten days may be if employee submitted application for passport/visa in a timely manner and still did not receive documents in time to proceed to the foreign area.)

Here, the agency does not dispute that claimant was authorized FTA, nor does it dispute the nature of her expenses or the amount of her claim (\$2427.42).⁴ Rather, the

⁴ The record does not provide a total claim amount, but it does contain three FTA worksheets which claimant submitted to the agency in support of her claim. The three worksheets total \$2427.42.

agency's denial was based on its interpretation of the provision that states, "[T]he ten days may be anywhere in the U.S. . . . as long as employee or family members have not begun travel on orders and final departure is from the U.S. post of assignment." The agency denied her FTA claim because she flew to Saudi Arabia from Jackson, Mississippi, rather than driving back to Fort Campbell and *then* flying to Saudi Arabia. While we understand how an agency might read the regulation in this way, such an interpretation is incorrect.⁵

The Board recently addressed this issue in *Patrick S. Horan*, CBCA 5424-RELO, 16-1 BCA ¶ 36,515, and *Gregory P. Walker*, CBCA 5496-RELO, 17-1 BCA ¶ 36,594. In both cases, the employees stayed in temporary lodging, departed their U.S. posts of assignment in their personal vehicles, drove several hundred miles, and then sometime later flew to their new overseas assignments. Significantly, neither employee drove back to his U.S. post of assignment in order to fly overseas. Rather, they both flew from airports that were located hundreds of miles away from their U.S. posts. In each case, however, the Board granted the employee request for FTA for qualifying expenses incurred *prior* to final departure from their posts. Requests for costs incurred *after* their departure from their U.S. posts were denied as FTA, since they could appropriately be considered under travel regulations.

In *Horan*, we noted that the dispositive issue in such cases is identifying when the employee makes his or her final departure from the U.S. post of assignment. In this case, claimant made her final departure from Fort Campbell on or about February 3, 2016. She departed her post in her personal vehicle and drove to Jackson, Mississippi, where she remained on leave, waiting for her diplomatic passport—a required document for traveling to her new post.⁶ Approximately two weeks after claimant received her passport, she flew to Saudi Arabia from the airport in Jackson, a decision the agency contends deprived her of receiving any pre-departure subsistence benefits under the FTA.

However, as we explained in *Horan*:

⁵ The regulation provides extensive guidance and examples related to various possible calculations of per diem in DSSR 242.3(a) and (b), but provides no examples related to the provisions in paragraph 242.3(c).

⁶ The record shows that claimant had reached the credit limit on her government travel card. Additional nights in temporary lodging at Fort Campbell would have been her responsibility. She maintained that she went home on leave to avoid incurring these costs, which is reasonable since her PCS orders state that any additional travel time to the new permanent duty station, for the convenience of the employee, would be charged as leave.

When read in conjunction with DSSR 242.1(c), it is clear that the language in DSSR 242.3(c) means only that, once the employee and his family make their “final departure” from the employee’s U.S. post of assignment to begin their travel to the new foreign duty post, the period for an FTA comes to an end. The provision cannot mean that the employee is required directly to depart the United States itself from the U.S. post of assignment – if it did, employees assigned to relatively remote United States posts without any nearby local air service could never qualify for an FTA because they could not fly directly out of the United States from their remote United States posts to their new foreign duty posts. We do not read the DSSR as limiting FTAs to employees who happen to be stationed in urban areas with easy access to international airports. To the contrary, the DSSR provisions, read together, provide for an FTA for a limited period of time up until the employee makes his or her “final departure” from the original post for the new foreign post, but without defining how long it might take the employee to get to his or her new foreign duty station or the modes of transportation that the employee might take to get there. The Army’s application of a requirement for a “final departure” from the United States itself from the airport closest to the original United States post of assignment finds no support in the DSSR.

16-1 BCA at 177,892-93.

According to the FTA worksheets she submitted, claimant seeks payment for twenty-three days of lodging and meals. With the exception of one of those days (March 5, 2016), all costs claimed were incurred *prior* to her final departure from Fort Campbell and *prior* to her beginning travel to her new duty station. The fact that claimant flew out of Jackson rather than driving back to Fort Campbell is of no consequence to her qualifying for payment of predeparture subsistence benefits under the FTA. As the Board decided in *Horan and Walker*, once an employee makes his or her final departure from the U.S. post of assignment, entitlement to FTA expenses comes to an end.

The agency cites two previous Board cases in support of its decision to deny the claim: *Tyler F. Horner*, CBCA 4468-RELO, 15-1 BCA ¶ 35,899, and *MarieLouise R. Assing*, CBCA 4921-RELO, 15-1 ¶ BCA 36,173. Neither case supports denying this claim. The Board distinguished *Horner* in the *Horan* decision, stating:

To the extent that the Army believes that the Board’s decision in *Tyler F. Horner*, CBCA 4468-RELO, 15-1 BCA ¶ 35,899, supports its position, the Army is misreading that decision. *Horner* dealt with an employee who sought an FTA for expenses that he incurred at an alternate location in the United

States *after* he had already made his final departure from his original United States post of assignment. *Horner* 15-1, BCA at 175,504. It was because the employee had already made his final departure from his original United States post before incurring expenses at the alternate location, and did not return to or depart from the post of assignment after incurring those expenses, that the employee was precluded from reimbursement for an FTA. *Horner* did not purport to change or add to the requirements of the DSSR.

16-1 BCA at 177,893.

In *Assing*, the Army denied the claim because the employee requested reimbursement of temporary lodging costs which she incurred *after* she departed her U.S. post of assignment and began traveling on orders. Notably, the fact that the employee departed the United States from Maryland rather than from her U.S. post of assignment in Arizona was not the principal issue. In its review of the decision, the Board explained: “We agree with the Army that the regulations governing the FTA are unforgiving; they do not allow granting the allowance to anyone, no matter the circumstances, for any days *after* an employee begins travel on orders.” *Assing*, 15-1 BCA at 176,506 (emphasis added).

In the instant case, the vast majority of lodging expenses claimed were incurred *prior* to claimant departing her U.S. post of assignment and *prior* to beginning travel on orders to her new duty assignment. A single day of lodging costs was incurred *after* departing her U.S. post and *after* beginning travel on orders. Consistent with the Board’s previous decisions, costs incurred prior to claimant’s final departure from her U.S. post are payable, while costs incurred after her final departure are not.

Although claimant’s request for reimbursement was initially denied based solely on her departure location (Jackson, Mississippi), the agency raised a second basis for denying the claim. The agency reasoned:

[I]t appears that her household goods pick-up did not occur until [on or about] 02 February 2016, immediately followed by her leaving Robinson Hall, Kentucky. As a result, it is unclear from the record when Ms. Edwards vacated her residence that would have warranted her stay in temporary lodging as of 12 January 2016, and subsequently consideration of payment of the allowance; rather, a complete vacating of the residence did not occur until 02 February 2016. Since the vacating of permanent quarters is a requirement for authorizing the allowance under DSSR 241.2c in connection with DSSR 242.3c, we take the position that Ms. Edwards did not meet those requirements.

In a supplemental communication to the agency and the Board, claimant explained that her household goods were held in temporary storage while she was deployed, not at a residence. This clarification precludes any linking of her household goods pick-up date with the date she vacated her residence, and removes any doubt about her compliance with the regulation.

The DSSR provides for pre-departure subsistence expenses for “lodging . . . in temporary quarters for [an] employee . . . for up to 10 days prior to final departure from a post in the United States to a post in a foreign area, beginning not more than 30 days after they have vacated residence quarters.” Here, claimant stayed with friends after very recently returning to Fort Campbell from Afghanistan. She left her friends’ residence quarters on January 12, 2016, and moved into temporary quarters on the same day. Therefore, she falls well within the required start time for temporary quarters (within thirty days of vacating residence quarters).

Amount of FTA Expenses

Although the DSSR provides up to ten days of pre-departure subsistence expenses in support of overseas PCS moves, agencies may authorize additional days when circumstances warrant more time. The example provided in the regulation is a delay due to the employee not yet having an official passport, which is precisely the situation in this case. Here, the agency authorized thirty days of FTA on her orders; she requested reimbursement for twenty-three days. We find that the days between January 12 and February 2, 2016 are compensable under the regulation. The one day in March, however, is not because the expenses were incurred after her final departure from Fort Campbell. The agency may consider the March expenses appropriate for payment under other travel regulations.

Decision

The claim is granted in part. Claimant is entitled to twenty-two days of FTA. We remand the case to the agency to calculate the correct amount of FTA.

KATHLEEN J. O’ROURKE
Board Judge