



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 11, 2017

CBCA 5528-RELO

In the Matter of SEAN P. TWEED-KENT

Sean P. Tweed-Kent, FPO Area Europe, Claimant.

Luisa Cibelli, Human Resources Specialist, Human Resources Office, Naval Support Activities, Naples, Department of the Navy, FPO Area Europe, appearing for Department of the Navy.

RUSSELL, Board Judge.

Claimant, Sean P. Tweed-Kent, an employee with the Department of the Navy, challenges the agency's determination denying him reimbursement for certain costs related to his temporary quarters subsistence allowance (TQSA). For reasons stated below, we deny Mr. Tweed-Kent's claim for lodging and grocery expenses while on vacation, and remand to the agency to reconsider amounts that might be owed to him for the post-vacation grocery expense at issue.

Background

The Navy transferred Mr. Tweed-Kent from Fort Belvoir, Virginia, to Naples, Italy. Pursuant to the Navy's provision of a TQSA, he and his family occupied temporary quarters at his new duty station from July 12 to September 8, 2016. Just before vacating temporary quarters, during the Labor Day weekend from September 2 through September 4, 2016, Mr. Tweed-Kent and his family took a trip to Siena, Italy, 365 kilometers (or 227 miles) from Naples. He subsequently requested reimbursement for lodging and meal expenses incurred during the trip to Siena. However, upon learning that lodging expenses while in Siena were non-reimbursable as outside of post, he modified his request seeking instead reimbursement for his Naples lodging, which he had not vacated during the Labor Day weekend period.

Mr. Tweed-Kent also requested reimbursement for grocery expenses in the amount of \$334.89 incurred on September 6, 2016.¹

The Navy denied Mr. Tweed-Kent's request for reimbursement for the Naples lodging because he was not occupying the lodging during the period at issue (as he and his family were in Siena), and he was not in a temporary duty status away from post. Similarly, the Navy denied his request for reimbursement of meal expenses related to his Siena trip as those expenses were incurred while on vacation. The Navy approved reimbursement of only \$150 of the \$334.89 requested by Mr. Tweed-Kent for the September 6, 2016, grocery expense.

In response to a request by the Board, the Navy provided a methodology showing how it determined that \$150 was an appropriate reimbursement for the grocery expense at issue. The Navy noted that Mr. Tweed-Kent received TQSA for approximately two monthly periods, the first from July 12 to August 10, 2016, and the second from August 11 to September 8, 2016. For the first period of TQSA, Mr. Tweed-Kent claimed grocery expenses of \$391.75 and €823.18, and for the second, he claimed grocery expenses of \$2128.78 and €951.14. The Navy determined that \$150 was an appropriate reimbursement amount by using a methodology based on what the agency considered weighted averaging of daily grocery expenses incurred by Mr. Tweed-Kent, exclusively in dollars, during his second period in temporary quarters.² The Navy did not explain why it did not include those grocery expenses that Mr. Tweed-Kent incurred in euros in its methodology.

¹ The grocery expenses incurred on that day actually totaled \$526.08 but Mr. Tweed-Kent is seeking only \$334.89 of this amount, based on deducting certain expenses for goods he identifies as "non consumables," e.g., cleaning supplies, storage bags, and paper towels.

² In dollars, Mr. Tweed-Kent incurred \$2128.78 in grocery expenses during his second period of TQSA consisting of twenty-nine days. During the last three of those twenty-nine days, he incurred expenses of \$708.56, specifically, \$526.08 (on September 5, 2016), \$32.18 (on September 7, 2016), and \$150.30 (on September 8, 2016). The agency explained its methodology as follows:

The methodology we used to determine the amount of Mr. Tweed-Kent's grocery claim was based on an average between the 29 days daily amount (\$2,128.78/29 days = \$73.40) and the last three days daily amount (\$708.56/3 days = \$236.18) of the grocery amount Mr. Tweed-Kent was requesting as summarized in the following calculation:

$$\$73.40 + \$236.18 = \$309.58/2 = \$154.79, \text{ which was rounded to } \$150.00.$$

In assessing the amount for reimbursement, the Navy stated that it considered, and was concerned by, the substantial increase in Mr. Tweed-Kent's grocery expenses from the first period of TQSA to the second period. The Navy particularly focused on those amounts of grocery expenses that Mr. Tweed-Kent incurred during his final eleven days in temporary housing, stating,

Upon receipt of [Mr. Tweed-Kent's] second TQSA claim, the last 11 days (of which almost 4 days the employee and family were away from post) of the claim were questioned. Mr. Tweed-Kent was due to move into his permanent quarters on 9 September 2016. On 29 August 2016, he had a grocery expense of \$408.95, and on 1 Sep 2016 he had another grocery expense of \$174.88, in addition the employee had consumed meals at the restaurant for lunch and dinner plus other minor grocery expenses. On 2 September 2016, Mr. Tweed-Kent left to go to Siena, Italy with his family for three days (2-4 September 2016) to return the evening of the 5th of September. From 6 September through 8 September 2016, Mr. Tweed-Kent submitted a grocery expense for the amount of [\$]526.08^[3] (three days before moving into his permanent quarters) and another grocery expense on the last day for the amount of \$150.30, in addition to other minor grocery expenses and meals at the restaurant.^[4]

Discussion

"TQSA is intended to pay for reasonable subsistence expenses of an employee and immediate family members while occupying temporary quarters when relocating to or from an overseas location." *Nhia Xiong*, CBCA 5464-RELO, 17-1 BCA ¶ 36,644, at 178,462. The granting of TQSA is authorized by the Overseas Differentials and Allowances Act, 5 U.S.C. §§ 5921 *et seq.* (2012), and implementing regulations established by the Secretary of State under authority delegated from the President. *Nhia Xiong*, 17-1 BCA at 178,463. The Department of State Standardized Regulations (DSSR), issued by the Secretary of State, are the rules pursuant to which federal employees receive overseas allowances, including TQSA. *Id.* These rules state that "[t]he rate at which [a] temporary quarters subsistence

³ As noted, Mr. Tweed-Kent is only seeking \$334.89 of this amount.

⁴ The other grocery expenses that Mr. Tweed-Kent incurred during his last eleven days in temporary housing include \$6.58 on August 29, 2016, \$56.49 (plus €85.21) on August 31, 2016, €28.23 on September 1, 2016, and \$32.18 on September 7, 2016. Thus, during these eleven days, Mr. Tweed-Kent incurred \$1355.46 (plus €113.44) in grocery expenses.

allowance may be granted shall be the total amount of the reasonable and necessary expenses for the employee and family members” and “[o]nly actual subsistence expenses incurred, which are reasonable in amount and incident to the occupancy of temporary quarters, shall be reimbursed.” DSSR 125. “Underlying the [legislative] authorization” for TQSA “is the expectation that expenditures will be incurred prudently [by agency employees] and that agencies may question claimed amounts that appear excessive or unreasonable.” *Michael J. Krell*, GSBCA 13710-RELO, 98-2 BCA ¶ 30,050, at 148,661.

As has been long held, the provision of allowances under the Overseas Differentials and Allowances Act and the DSSR is a discretionary matter. *Charles E. Brookshire*, B-196,809 (May 9, 1980) (Comptroller General, who previously decided matters under the Overseas Differentials and Allowances Act, states provision of TQSA is discretionary); *see also Michael J. Krell*, 98-2 BCA at 148,661. As such, the heads of agencies have broad discretion in the provision of TQSA within the confines of the statute and the DSSR. *Charles E. Brookshire; Lynn A. Ward*, CBCA 2904-RELO, 13-1 BCA ¶ 35,276, at 173,153. In this matter, Mr. Tweed-Kent challenges the Navy’s determination denying him lodging and meal expenses related to his Siena trip and reducing the amount of reimbursement for the grocery expense at issue.

As for Mr. Tweed-Kent’s claim related to his Siena trip, “[t]he DSSR does not speak directly to the question of whether an employee is eligible for TQSA” while on vacation. *See Richard H. Whittier*, GSBCA 16538-RELO, 05-1 BCA ¶ 32,926, at 163,103. However, consistent with the Board’s practice of looking at principles governing temporary quarters subsistence expense (TQSE) allowances to determine the appropriateness of reimbursement for TQSA expenses, we hold that Mr. Tweed-Kent is not entitled to reimbursement for meals and lodging for the period while he was vacationing in Siena.⁵ As this and our predecessor board in considering these matters have consistently held, “[a]gencies may not reimburse [employees for expenses] for vacation purposes or other reasons unrelated to the [employee’s] transfer.” *Steven H. Jenkins*, GSBCA 15810-RELO, 02-2 BCA ¶ 31,928, at 157,744; *see also Donald G. Lessner, Jr.*, CBCA 5288-RELO, 16-1 BCA ¶ 36,573, at 178,124 n.5; *Richard H. Whittier*, 05-1 BCA at 163,103. Mr. Tweed-Kent’s trip to Siena was not taken for the purpose of transacting or conducting official business on behalf of the Government. Thus, the agency acted appropriately in denying Mr. Tweed-Kent’s request to be reimbursed for expenses incurred during this trip. Further, “[b]y statute, TQSA is

⁵ “The TQSE allowance is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary [for the employee] to occupy temporary quarters,” and applies when the employee’s new official station is located in the United States. 41 CFR 302-6.3 to -6.4. As with TQSA, agencies have discretion to decide whether it is in the Government’s interest to pay TQSE. *Id.* 302-6.6.

intended to pay for reasonable subsistence expenses of an employee and immediate family members *while occupying temporary quarters* when relocating to or from an overseas location.” *Lynn A. Ward*, 13-1 BCA at 173,152 (emphasis added). Mr. Tweed-Kent was not occupying the Naples lodging during the period when he was vacationing in Siena. He also could not have received reimbursement from the Navy for lodging expenses while in Siena because his vacation was unrelated to the reason for his transfer to Naples. Accordingly, we will not disturb the Navy’s decision denying reimbursement for lodging and meal expenses during the period when Mr. Tweed-Kent was on vacation.

Turning to Mr. Tweed-Kent’s claim for the post-vacation grocery expense, the Navy objected to paying the requested amount, reducing reimbursement to \$150. The Navy noted the substantial increase in TQSA expenses incurred by Mr. Tweed-Kent from his first period in temporary housing to the second period, particularly focusing on the considerable amounts incurred in grocery expenses during Mr. Tweed-Kent’s final eleven days in temporary housing. We believe that the agency’s concern about Mr. Tweed-Kent’s grocery expense is reasonable. Based on the expense records provided, Mr. Tweed-Kent spent \$1355.46 (plus €113.44) on groceries during the last eleven days of his second TQSA period. This does seem excessive, particularly when compared to what he spent during the entirety of his initial thirty days or so in temporary housing (grocery expenses of \$391.75 and €823.18). Accordingly, we take no issue with the agency’s decision to reduce the amount requested by Mr. Tweed-Kent for the grocery expense in dispute by using a formula based on average daily grocery costs. And here, it seems that the agency was generous in basing its methodology solely on those costs incurred during the second period of TQSA, as exclusion from the methodology of the costs from the first period of TQSA, during which time Mr. Tweed-Kent’s grocery expenses were much lower, actually worked to Mr. Tweed-Kent’s benefit.

What we do not understand, however, is the methodology used by the agency in determining a reasonable reimbursement. Although we take no issue with the agency’s use of weighted averaging, the agency’s methodology does not appear to be correct. The Navy based its methodology on the average daily amount that Mr. Tweed-Kent spent on grocery expenses on his last twenty-nine days in temporary quarters (i.e., \$2128.78/29 days = \$73.40) and those on his last three days (i.e., \$708.56/3 days = \$236.18). The Navy added the average daily amounts for these periods (\$73.40 + \$236.18), and then divided the total by two (\$309.58/2), to find the figure of \$154.79. The Navy then rounded this “weighted” number down to \$150, an amount that the Navy proposes is reasonable to compensate Mr. Tweed-Kent for the grocery expense at issue. However, this methodology does not accurately reflect weighted averaging. Applying weighted averaging to the agency’s numbers, the formula, exclusive of the amount for the grocery expenses that Mr. Tweed-Kent incurred in euros, should actually be: $(2128.78 + 708.56)/(29 + 3) = \88.66 . Although this amount is

mathematically calculated, the Board cannot say that the number is reasonable as it does not include Mr. Tweed-Kent's grocery expenses incurred in euros, and the agency has not explained why those expenses should be excluded from the calculation. We are also unclear as to why the agency divided its weighted number by two.

An agency is certainly entitled to reject an employee's request for reimbursement of TQSA expenses deemed excessive. *See Michael J. Krell*, 98-2 BCA at 148,661 ("Expenses in excess of what the agency determines to have been reasonably incurred are not allowable."). The agency must, however, have sound, evidence-based reasons for its determination that an employee's requested TQSA expense is excessive, and if appropriate, use a suitable methodology, in determining what would be a reasonable reimbursement. In short, both the agency's decision finding an employee's TQSA expenses as excessive and its assessment of what is an appropriate reimbursement amount to compensate an employee for those expenses must be rational. *Nhia Xiong*, 17-1 BCA at 178,463-64 (agencies have discretion to create their own internal estimates of what is a reasonable TQSA reimbursement, but in doing so, must show, through evidence, why an employee's requested reimbursement is unreasonably high) (citing *Donald Mixon*, GSBCA 14957-RELO, 00-1 BCA ¶ 30,606, at 151,117 (1999)). Here, the agency, relying on Mr. Tweed-Kent's record of expenses, presented sufficient support for its finding that Mr. Tweed-Kent's grocery expenses during his last eleven days were excessive. The Board will not disturb this finding. However, the agency's methodology for determining a reasonable amount for reimbursement of the grocery expense at issue must be similarly reasonable and supported – specifically, here, the formula used, and the expenses included or excluded, must be mathematically appropriate and rational. Although the agency stated that it used weighted averaging to calculate a reimbursable amount, its formula does not accurately reflect weighted averaging of the incurred amounts. Additionally, as for excluding those grocery expenses incurred in euros from the calculation, the agency may have a legitimate explanation for doing so. However, it did not provide such an explanation in either its initial response to Mr. Tweed-Kent's claim or its follow-up response requested by the Board.

We conclude that the agency had legitimate reasons for rejecting Mr. Tweed-Kent's claim for TQSA related to his vacation. We remand to the agency to review its reimbursement determination for the grocery expense, consistent with this decision.

BEVERLY M. RUSSELL
Board Judge