



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 7, 2017

CBCA 5464-RELO

In the Matter of NHIA XIONG

Nhia Xiong, APO Area Europe, Claimant.

Yanir M. Hill, Assistant Deputy Chief of Staff, Department of the Army, Europe, APO Area Europe, appearing for Department of the Army.

SOMERS, Board Judge.

Claimant, Nhia Xiong, a civilian employee of the Department of the Army (the agency), seeks review of the agency's decision rejecting his request for reimbursement of meal expenses submitted under his temporary quarters subsistence allowance (TQSA). For the reasons stated below, we grant Mr. Xiong's claim.

Background

The Army transferred Mr. Xiong from Fort Eustis, Virginia, to Wiesbaden, Germany. The agency authorized payment of TQSA for ninety days. Mr. Xiong requested reimbursement for \$9161.59 for expenses incurred from May 16 through June 14, 2016, and \$4928.11 for expenses incurred from June 15 through June 30, 2016. Mr. Xiong submitted TQSA worksheets itemizing expenses claimed, together with supporting documents, which included certified statements to support his claim for three meals over \$75. Mr. Xiong explained, again in a certified statement, that he could not provide all of his receipts because his moving company accidentally threw out his folder containing those receipts.

The agency responded by email message on August 1, 2016, granting reimbursement for the majority of Mr. Xiong's claim. However, questioning some of the remaining charges, the agency asked Mr. Xiong to provide bank statements for all foreign currency conversion

charges. The agency denied Mr. Xiong's claim for hotel parking fees.¹ Finally, noting that agency policy required an employee to submit receipts for all meals exceeding \$50, the agency denied his request for reimbursement for three meals exceeding \$50 due to the lack of receipts.

Mr. Xiong submitted bank statements and a receipt for one of the three dinners. The agency approved reimbursement for the foreign currency conversion charges and the single dinner. Upon failing to resolve his dispute over the remaining two dinner charges, Mr. Xiong submitted his claim to the Board.

In its response to the Board, the agency stated that it could not reimburse Mr. Xiong for the remaining two meals because "the amounts claimed appeared to be unreasonably high given [Mr. Xiong's] explanation (obtaining food from various vendors at a local street fest)." The Army reiterated and defended its policy of requiring receipts for all meals over \$50. However, it agreed to reimburse Mr. Xiong \$50 for the two disputed meals.

In his reply to the Army's response, Mr. Xiong attempted to provide additional information to show how he calculated the expenses for the two disputed meals. Mr. Xiong submitted a table identifying the food items purchased and the cost for the items "from [his] memory as best as possible." Although Mr. Xiong did not keep a contemporaneous list of every food item purchased on either day, he stated that he tracked the amounts he spent by entering the festival with one-hundred euros each day and counting how many euros he had remaining at the end of each day. According to Mr. Xiong, "[m]onies spent on anything other than food were kept by [his] wife."

Discussion

By statute, 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. 5 U.S.C. § 5923(a)(1) (2012). "The TQSA is to cover the reasonable cost of lodging, meals, and laundry expenses incurred by an employee and his or her family." *Miriam E. Bolaffi*, CBCA 4029-RELO, 15-1 BCA ¶ 35,962, at 175,716; *Okyon Kim Ybarra*, GSBCA 15407-RELO, 01-1 BCA ¶ 31,334, at 154,762.

¹ Mr. Xiong, in his October 28, 2016, reply, conceded that hotel parking fees are not reimbursable. The Board agrees. As we have previously held, "hotel parking fees are not properly reimbursable as part of TQSA . . . because they are unallowable 'local transportation costs.'" *Anna M. Santana*, CBCA 4903-RELO, et al., 15-1 BCA ¶ 36,140, at 176,398.

The Secretary of State has authority to issue regulations “which implement statutes providing for overseas pay differentials and allowances, including TQSA.” *Ybarra*, 01-1 BCA at 154,762. Those regulations are implemented in the Department of State Standardized Regulations (DSSR). The Department of Defense Joint Travel Regulations (JTR) expressly provide that the TQSA rules established in the DSSR apply to Department of Defense employees. JTR C1255; *see generally William P. McBee, Jr.*, CBCA 943-RELO, 08-1 BCA ¶ 33,760.

The DSSR require an employee to document all expenses incurred. For temporary lodging, “[s]upporting receipts or other appropriate documentation for the daily cost” is required. DSSR 125. However, “[e]vidence of the daily cost of meals, laundry and dry cleaning shall be a certified statement by the employee.” *Id.* Department of Defense Instruction (DODI) 1400.25, Volume 1250, allows department officials to require receipts for meals they consider “extravagant.”

In this case, the agency states that its policy is to require receipts for all meals over \$50. As this Board has previously held, however, an “agency’s policy of requiring receipts as proof of actual costs for meals, laundry, and dry cleaning is contrary to DSSR 125, which only requires a certified statement of the employee of the costs incurred.” *David R. Bienvenue*, CBCA 4983-RELO, 16-1 BCA ¶ 36,286, at 176,958; *see also Ybarra*, 01-1 BCA at 154,763. Furthermore, federal statutes and regulations implementing them supersede agency policies. *Charles A. Houser*, CBCA 2149-RELO, 11-1 BCA ¶ 34,769. Therefore, “an agency cannot issue rules or regulations which run afoul of the express purpose stated by Congress or as implemented through regulation by the properly charged agency.” *Id.* at 171,112. As we explained in *Charles A. Houser*:

[T]he FTR is a “legislative rule”—a regulation issued under express authority from Congress, for the purpose of affecting individual rights and obligations by filling gaps left by a statute. . . . It therefore has controlling weight—the force of law—unless the provision in question is arbitrary, capricious, or manifestly contrary to statute. Any agency rule which is inconsistent with an FTR provision is consequently trumped by the FTR and must give way.

Id. Here, the agency’s policy of requiring receipts for all meals over \$50 runs contrary to the DSSR and the JTR. Both sets of regulations allow an employee to provide certified statements in lieu of receipts for meal expenses. Mr. Xiong provided the receipts he had and submitted certified statements for meal expenses when he could not obtain receipts. He is therefore in compliance with both the DSSR and the JTR and is entitled to reimbursement for those meal costs submitted.

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 claimed based on audit averaging all other TQSA claims paid during same fiscal year to similar size families); *Donald Mixon*, GSBICA 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.

The Army maintains that the amounts claimed by Mr. Xiong were unreasonably high, but provides no evidence as to why. Although the Army states that the amounts in question are high for a family of three including a two-year old, it does not provide any evidence of amounts spent by families of similar size while temporarily housed in the same area. Further, even if Mr. Xiong and his family spent more than similarly situated families, it does not mean that the spending was necessarily extravagant or unreasonable. For the two questioned meals, by recording the actual costs and certifying his statement, Mr. Xiong has complied with the regulation. Because the Army has not submitted any evidence to show that Mr. Xiong’s claim is extravagant as compared to spending by other families in the same area, or any other legitimate reasons to deny reimbursement, Mr. Xiong is entitled to reimbursement.

Although agencies are entitled and have discretion to create their own internal estimates of what is reasonable, *Mixon*, 00-1 BCA at 151,117, we conclude that Mr. Xiong fulfilled the requirements of DSSR 125. Consequently, the claim is granted. The agency must pay Mr. Xiong the amount of the meal costs in question.

JERI KAYLENE SOMERS
Board Judge