



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 16, 2018

CBCA 5994-RELO

In the Matter of JOHN C. SHIRE

John C. Shire, Fort Worth, TX, Claimant.

Zeb Swinney, Lead Financial Systems Analyst, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

RUSSELL, Board Judge.

Claimant John C. Shire, a civilian employee of the Department of Defense (DOD), seeks reimbursement for seven days of temporary quarters subsistence expenses (TQSE) authorized incident to his permanent change of station (PCS) from Chantilly, Virginia, to Fort Worth, Texas. DOD had reimbursed Mr. Shire for expenses related to a house hunting trip (HHT) for this same seven-day period. For the reasons stated below, we deny his claim for TQSE.

Background

Mr. Shire received travel orders on September 27, 2016, authorizing reimbursement for sixty days of TQSE and seven days for the HHT for both him and his spouse. His travel orders were subsequently amended to authorize an additional sixty days of TQSE, for a total 120 days. Mr. Shire entered into temporary quarters on November 2, 2016, and reported to his new duty station in Fort Worth on November 3, 2016. Although only seven days for an HHT were authorized, Mr. Shire's wife joined him on November 4 to conduct an HHT, and left nine days later on November 13, 2016.

Mr. Shire submitted settlement vouchers claiming 120 days of TQSE plus seven days of per diem and incidental expenses for his wife's HHT. The Defense Finance and Accounting Service (DFAS) paid claimant's HHT voucher but limited his TQSE reimbursement to 113 days. In his claim, Mr. Shire is seeking reimbursement for the remaining seven days of TQSE.

The Board subsequently requested that DFAS provide clarification on the specific HHT expenses for which Mr. Shire received reimbursement. In response, DFAS explained that all transportation expenses claimed by Mr. Shire for his wife's travel were reimbursed. DFAS paid for Mrs. Shire's airfare using a government credit card, and reimbursed Mr. Shire for the remaining transportation costs incurred, including those for parking and terminal mileage fees. DFAS added that Mr. Shire received a total of \$331.50 in per diem for the seven days authorized for his wife's HHT – i.e., seventy-five percent of the standard per diem rate for each of the two days that Mrs. Shire traveled (i.e., .75 x \$51=\$38.25 for each day), and the full per diem rate of \$51 per day for the remaining five days of the HHT. DFAS explained that Mr. Shire did not claim lodging on his wife's HHT settlement voucher but was paid for his lodging during the period of Mrs. Shire's HHT as part of Mr. Shire's reimbursement for his first thirty-day TQSE settlement voucher. The record provided by DFAS also shows that, in addition to reimbursement for his wife's per diem, Mr. Shire received separate reimbursement for his own per diem during the seven-day period of Mrs. Shire's HHT.

Discussion

The Federal Travel Regulation (FTR) provides that TQSE is “intended to reimburse an employee reasonably and equitably for subsistence expenses incurred” while occupying temporary quarters. 41 CFR 302-6.3 (2016). An agency is authorized to approve TQSE for a maximum of 120 consecutive days. 41 CFR 302-6.104.

As for an HHT, an agency has discretion to determine whether provision of an HHT expense allowance to an employee is in the Government's interest, and what procedures an employee must follow if such an allowance is authorized. 41 CFR 302-5.5. The purpose of an HHT is to expedite an employee's transition to permanent lodging, reducing government expense by limiting the time an employee occupies temporary quarters. 41 CFR 302-5.2; JTR 5860.

An HHT must be completed by an employee prior to reporting to a new duty station or, if it is to be completed by the employee's spouse, the HHT must be completed the day before the employee's family relocates to the new duty station or “[t]he day before the maximum time for beginning allowable travel expires.” 41 CFR 302-5.12. Additionally, the

Joint Travel Regulations (JTR), applicable to Mr. Shire as a DOD employee, provide that, “[i]f an employee is paid/reimbursed for HHT days and authorized TQSE . . . is subsequently claimed for more than 30 days, the actual number of HHT days (NTE [not to exceed] 10) paid/reimbursed . . . are deducted from the first authorized TQSE . . . period.” JTR 5894-A.

DFAS argues that the days Mrs. Shire spent house-hunting were properly subtracted from Mr. Shire’s TQSE authorization pursuant to JTR 5894-A. DFAS relies on our decision in *Robert D. Tracy*, CBCA 3689-RELO, 14-1 BCA ¶ 35,636, wherein a claimant authorized sixty days of TQSE was found entitled to take up to fifty-two of those days following use of eight days of HHT. Mr. Shire attempts to distinguish his case from the facts in *Robert D. Tracy* by noting that his wife’s HHT occurred concurrently with his TQSE, whereas Mr. Tracy’s did not. Mr. Shire contends that the JTR does not require an adjustment to TQSE when HHT is taken during the TQSE period. Mr. Shire’s reading of the JTR is not correct. The JTR requires the deduction of HHT days from TQSE periods of more than thirty days – with no exceptions delineated.

Mr. Shire was authorized and took 120 days of TQSE, the maximum allowed by the FTR. He was reimbursed for his wife’s expenses incurred for the HHT, including those for his wife’s transportation and per diem. Mr. Shire did not claim lodging expenses for his wife’s HHT but, instead, he was reimbursed for lodging as part of his TQSE.

The agency correctly denied Mr. Shire’s request for reimbursement for the seven days of TQSE. Pursuant to the JTR, because Mr. Shire was paid for seven days of HHT, he can only be reimbursed for 113 days of TQSE. See *Benjamin A. Knott*, CBCA 4579-RELO, 15-1 BCA ¶ 35,961, at 175,715; see also *Melinda Slaughter*, CBCA 754-RELO, 07-2 BCA ¶ 33,633, at 166,579 (claimant entitled to only fifty of sixty authorized TQSE days following a ten day HHT); *James T. Rubeor*, CBCA 4084-RELO, 15-1 BCA ¶ 35,905, at 175,513 (“Where the agency has approved a sixty-day period for reimbursable TQSE, the period of HHT reimbursement is subtracted from the sixty days to determine the period that TQSE will be reimbursable.”).

As it stands, with the adjustment, i.e., with no TQSE reimbursement for the seven days taken for HHT, Mr. Shire is receiving no payment whatsoever for lodging or his own meals for a seven-day period. As for lodging, however, he could have sought authorization for this expense as part of his wife’s HHT but understandably did not because he was already in temporary quarters. Thus, although the agency’s decision here technically comports with the JTR, the agency might wish to consider allowing Mr. Shire to amend his travel voucher, if feasible, to include the lodging expense as part of his wife’s HHT. It seems that the lodging expense would have been paid if requested as part of HHT, and not as part of TQSE.

Decision

For these reasons, claimant's appeal is denied.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge