



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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October 4, 2019

CBCA 6450-RELO

In the Matter of DEBRA C. CLARK-BURNSIDE

Debra C. Clark-Burnside, Dülmen, Germany, Claimant.

Suzanne R. Torres, Assistant Deputy Chief of Staff, and Ilona M. Keller, Human Resources Specialist, Civilian Personnel Directorate, Department of the Army, APO Area Europe, appearing for Department of the Army.

**LESTER**, Board Judge.

Claimant, Debra C. Clark-Burnside, has requested that we review a decision by the Department of the Army (Army) denying her a foreign transfer allowance (FTA). Because the claimed costs were all incurred after Ms. Clark-Burnside made her final departure from her original duty station in the Marshall Islands, FTA is unavailable. Nevertheless, in the unusual circumstances presented in this case, claimant should be reimbursed for the relocation travel costs that she unexpectedly incurred, through no fault of her own, during a necessary stopover in Baltimore while en route from a remote area to a new duty station in Germany.

Background

Ms. Clark-Burnside was working for the Army at a duty station at Kwajalein Atoll, Marshall Islands, when she applied for and, on or about December 12, 2017, was offered a position with the United States Army Garrison BENELUX (Garrison Benelux), with a duty assignment in Dülmen, Germany. Ms. Clark-Burnside accepted the position and immediately began the process of completing requirements for the transfer.

While working at her original duty station in Kwajalein Atoll, Ms. Clark-Burnside was serving as guardian of her teenage granddaughter, who lived with Ms. Clark-Burnside in the Marshall Islands and would move to Germany under Ms. Clark-Burnside's continuing guardianship. For the move to Germany, Ms. Clark-Burnside requested that her adult dependent son, who was at that time living in or near Baltimore, Maryland, also be allowed to join her as an authorized dependent traveler and resident, a request that the Army granted.

As part of the move to Germany, Ms. Clark-Burnside was required to obtain new official passports for her granddaughter and son. In its submission to the Board in response to Ms. Clark-Burnside's claim, the Army explained that there is no official United States passport office in Kwajalein Atoll and that employees transferring from there ordinarily have to fly to Hawaii to obtain them. Ms. Clark-Burnside's permanent change of station (PCS) travel orders, as issued on December 17 and amended on December 19, 2017, provided that, rather than stopping in Hawaii, Ms. Clark-Burnside was authorized to stopover in Baltimore to obtain the official passports, to deliver a privately-owned vehicle (POV) to the vehicle processing center (VPC) there, and to accompany her son, who could not travel alone, from Baltimore to her new duty station in Germany:

Travel via Baltimore MD authorized. Employee authorized to stop in Baltimore MD to turn in POV to the nearest VPC, finalize official passports for family members, and to escort authorized adult son who cannot travel alone.

Under those travel orders, Ms. Clark-Burnside was to depart Kwajalein Atoll with her granddaughter for Baltimore on December 26, 2017; take various forms of accrued leave from December 27, 2017, through January 21, 2018; and then proceed from Baltimore, with her son and granddaughter, to Germany.

For various reasons, and with the agency's approval, Ms. Clark-Burnside and her granddaughter actually departed Kwajalein Atoll on December 22 and arrived in Baltimore on December 23, 2017. Ms. Clark-Burnside took accrued leave from December 23, 2017, through January 19, 2018. At the outset of her leave, she submitted required materials to the Washington Passport Office to support issuance of her dependents' passports. She expected to depart Baltimore for Germany with her dependents on January 19, 2018. The Passport Office indicated that the official passports were anticipated to be issued well before that scheduled departure.

On January 12, 2018, however, Ms. Clark-Burnside received an email from the State Department, notifying her that both dependents' passport applications had been suspended "because the [Washington Passport Office] agent did not properly execute the application"

and because, for one of the applications, the agency needed to obtain additional information from a third party. Despite the assistance and input of the Army, Ms. Clark-Burnside did not receive the passports until February 2, 2018. The Army acknowledges that the delay in issuance of the passports was not Ms. Clark-Burnside's fault. Following airline rescheduling and reauthorization efforts, Ms. Clark-Burnside and her dependents departed Baltimore on February 8, 2018, on a flight for Germany.

After she began her duties in Germany, Ms. Clark-Burnside requested that the Army grant her an extended period of FTA – from January 19 to February 8, 2018 – to cover costs that she incurred during the time, after the conclusion of her leave, that she and her dependents had to remain in Baltimore because of the unexpected delay in the delivery of the passports. The authorizing official for Garrison Benelux approved that written request. In addition, on May 2, 2018, Ms. Clark-Burnside's authorizing official issued a second amendment to the previously issued travel authorization, this time adding language to the prior authorization addressing the start date for the extended FTA:

Foreign Travel Allowance will start on 20 January 201[8]. Dependent [son] will depart from Baltimore, MD. Travel to Baltimore MD authorized. Kwajalein Atoll does not have an official passport office and employee is authorized to request official passports in Baltimore, MD. Official time in Baltimore will be covered by leave dates and Foreign Travel Allowance dates.

When Ms. Clark-Burnside submitted a voucher for FTA reimbursement totaling \$5815.05, the Garrison Benelux authorizing official approved it for payment.

Nevertheless, the travel command payment office, upon receipt of that voucher, declined to make payment, asserting that Ms. Clark-Burnside was not eligible for FTA for the time that she spent in Baltimore because all claimed costs were incurred after her final departure from her original duty station. Ms. Clark-Burnside ultimately submitted her claim for FTA to the Board for review.

## Discussion

### FTA Eligibility

The situation here is somewhat unique in that the employee was unable to obtain necessary official passports at her original duty station at Kwajalein Atoll and had to stopover in the United States to obtain them while en route to Germany, a process that appears, from the agency's filings, not uncommon for departing Marshall Islands employees. A delay in the issuance of the passports, which were necessary for the trip to Germany, occurred while

she was in travel status after leaving her original duty station, and Ms. Clark-Burnside had to incur costs for lodging and meals during that multi-week delay. The agency subsequently amended her PCS travel orders to authorize FTA for the delay period, and, relying on that authorization, she claimed FTA in her voucher. Upon further review, though, the agency's travel command determined that Ms. Clark-Burnside could not receive FTA for her time in Baltimore.

We agree with the agency that FTA does not apply in the situation here. The Department of State Standardized Regulations (DSSR), which govern PCS travel by federal civilian employees to overseas duty stations, defines 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) (emphasis added). Those pre-departure subsistence expenses can be incurred “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.*” DSSR 242.3(c) (emphasis added).

As we have previously held, “[t]he DSSR creates a hard-and-fast rule regarding the conclusion of the FTA entitlement period.” *Scott A. Larsen*, CBCA 5732-RELO, 17-1 BCA ¶ 36,860, at 179,598. “[U]nder the DSSR, any FTA expenses have to be incurred before the employee or family members have ‘begun travel on orders’ and before ‘final departure’ of the employee or his family ‘from the U.S. post of assignment.’” *Patrick S. Horan*, CBCA 5424-RELO, 16-1 BCA ¶ 36,515, at 177,893 (quoting DSSR 242.3(c)). “[O]nce the employee and his [or her] 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.” *Id.* at 177,894. Accordingly, “[a]n employee may be reimbursed for expenses of pre-departure [FTA] only if the [employee incurred FTA costs] prior to departing his/her old duty station.” *Jessica M. Koldoff*, CBCA 2656-RELO, 12-2 BCA ¶ 35,151, at 172,528. The regulations governing FTA “do not allow granting the allowance to anyone, no matter the circumstances, for any days after an employee begins travel on orders.” *MarieLouise R. Assing*, CBCA 4921-RELO, 15-1 BCA ¶ 36,173, at 176,506.

Here, Ms. Clark-Burnside’s original duty station was at Kwajalein Atoll, and she and her granddaughter made their final departure from that duty station on December 22, 2017. Once they made final departure from that duty station, entitlement to FTA ended. *Lee Ethel Edwards*, CBCA 5446-RELO, 17-1 BCA ¶ 36,643, at 178,460; *MarieLouise R. Assing*, 15-1 BCA at 176,506. The costs that Ms. Clark-Burnside seeks were incurred in Baltimore, after her final Kwajalein Atoll departure. FTA cannot be used as a means of compensating for those costs.

That Ms. Clark-Burnside's supervisors issued travel orders authorizing FTA for her time in Baltimore (albeit through an amendment after her trip completion) does not affect the result. Travel orders erroneously authorizing relocation expenses to which an employee is not entitled under applicable statutes and regulations do not create a right to reimbursement. *Rosemary Schultz*, GSBICA 16703-RELO, 05-2 BCA ¶ 33,107, at 164,085-86.

### Reimbursement as Travel Costs

Although we cannot properly characterize Ms. Clark-Burnside's Baltimore expenditures as FTA, we disagree with the agency that Ms. Clark-Burnside simply has to bear the burden of extra costs resulting from the passport issuance delay.

The agency acknowledges that, had Ms. Clark-Burnside been able to return to the Marshall Islands after obtaining passports and made "final departure" for Germany from there, costs incurred during the entirety of the period of the passport issuance delay would have been reimbursable as FTA. Although FTA normally has a ten-day limit, an agency may extend it if "unusual circumstances cause an employee or family member to be unable to travel to the foreign post of assignment within the ten day limit," such as where an "employee submitted [an] application for passport/visa in a timely manner and still did not receive documents in time to proceed to the foreign area." DSSR 242.3(a). Plainly, applicable regulations envision the possibility of reimbursement of costs associated with the type of passport issuance delay that Ms. Clark-Burnside experienced here. The problem for those with original duty station assignments in remote areas like Kwajalein Atoll is that, from a logistics standpoint, it is cost- and time-prohibitive to return to the area after obtaining passports simply to receive FTA coverage.

In these circumstances, there is no reason that the costs of the unexpected delay that the claimant and her granddaughter incurred in the Baltimore area cannot be reimbursed as relocation travel costs. Ms. Clark-Burnside began her travel to Germany when she departed Kwajalein Atoll, and her PCS travel orders authorized her to deliver her POV to the VPC in Baltimore while en route and, while there, to obtain the necessary official passports that she and her family would need to travel to Germany. Further, the agency acknowledges that official passport services are not available in Kwajalein Atoll and that any employee transferring from there to an overseas duty station will need to travel to Hawaii or, as here, the continental United States to obtain passports prior to relocation, something Ms. Clark-Burnside's official travel orders expressly authorized. The agency has not questioned – and, based upon the documentation that Ms. Clark-Burnside has provided to the Board, cannot legitimately question – that the delay in the issuance of necessary passports was not Ms. Clark-Burnside's fault. Given that she needed the official passports for her dependents to travel with her to the new duty station in Germany and could not reasonably have obtained

the passports before departing her Marshall Islands duty station, it is clear that the extra time that she had to spend in Baltimore waiting for passports was necessary to allow her to meet the requirements of (and, in fact, to get to) her new position. Such costs are reimbursable costs of travel. *See Scott A. Larsen*, 17-1 BCA at 179,599-600 (counting the five-day period that claimant spent in a hotel after departing his PDS and delivering his POV to the VPC, but before boarding flight to new PDS, as part of claimant's travel costs because VPC access and flight scheduling issues required claimant's stay).

The agency asserts that we cannot view Ms. Clark-Burnside's time in Baltimore as "travel time." It argues that, under the Joint Travel Regulations (JTR), actual travel time is limited to that "required for transoceanic travel by aircraft or ship over a usually traveled direct route," JTR 053807-C (Aug. 2019),<sup>1</sup> and that PCS travel and transportation reimbursement "is limited to the actual time it takes to travel between the old and new PDS using the usually traveled route," apparently including only that time spent physically progressing towards the new duty station. Agency Supplemental Response at 2 (Aug. 23, 2019). Yet, "[e]ntitlement to per diem 'starts on the day [the employee] depart[s his or her] home, office, or other authorized point and ends' when the employee reaches the 'authorized point.'" *Bryon L. Craig*, CBCA 6481-TRAV, 19-1 BCA ¶ 37,390, at 181,776 (quoting 41 CFR 301-11.9); *see* JTR 010203 (Feb. 2018) (Travel status "ends when the traveler . . . arrives at a new PDS by signing in with the new unit or agency."). "This entitlement arises from the employee's actual travel experience," *id.*, and encompasses and accounts for "necessary delays while awaiting further transportation after travel status begins." JTR 020302-C (Feb. 2018). The JTR expressly recognizes that additional travel time may be approved "for reasons beyond the employee's control." JTR 5526-C.1 (Feb. 2018).

Here, contrary to the Army's assertion, the actual time that it took Ms. Clark-Burnside and her granddaughter to travel from Kwajalein Atoll to Germany includes the delay period occasioned by the State Department's passport processing error, given that, without official passports, they could not travel onward to Germany. "There is no bar to paying per diem 'for periods of delay . . . where [1] the cause of delay is clearly beyond the control of the

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<sup>1</sup> We note that the agency has cited to the version of the JTR in effect in August 2019, when the agency filed its response to Ms. Clark-Burnside's claim. The Federal Travel Regulation (FTR) provides that a claimant's relocation travel entitlements "are determined by the regulatory provisions that [were] in effect at the time [she] report[ed] for duty at [her] new official station," 41 CFR 302-2.3 (2018), and the applicable version of the JTR does not contain a section numbered 053807. Under the applicable February 2018 version of the JTR, the sections that define or relate to "travel status" and "travel time" are JTR 010203, 020302, 5526, and 5605.

employee and [2] is not for his [or her] personal convenience and where [3] the circumstances of the situation reveal that the employee acted in a prudent manner.” *Bryon L. Craig*, 19-1 BCA at 181,776 (quoting *Hank Meshorer*, 68 Comp. Gen. 37, 39 (1988)).

### Quantum

The agency questions the absence of documentary support for the dollar amounts that Ms. Clark-Burnside claims for lodging and for meals and incidental expenses (M&IE) from January 20 to February 7, 2018.

As for lodging, Ms. Clark-Burnside has claimed either \$81.05 or \$81.10 as lodging for each night during that period. She has attached to her claim a receipt showing that, after she was informed that there would be a delay in passport issuance, she contracted for short-term housing in Baltimore County at a total ultimate cost of \$1540, which allowed her and her dependents to stay at a location near Baltimore during the passport issuance delay at a cost below the nightly lodging per diem for that area. Dividing the claimed amount by the nineteen days that they stayed in the rental unit results in a daily lodging rental rate of approximately \$81.05, which falls within the permissible daily lodging per diem for Baltimore County. *See* Federal Travel Regulation (FTR) 301-11.14 (41 CFR 301-11.14 (2018)) (If the traveler obtains lodging on a long-term basis, the “daily lodging rate is computed by dividing the total lodging cost by the number of days of occupancy for which you are entitled to per diem, provided the cost does not exceed the daily rate of conventional lodging.”); *id.* 302-4.100 (applying rules of FTR chapter 301 to PCS travel expense reimbursements).

As for M&IE, Ms. Clark-Burnside requested M&IE allowance of exactly \$225 for each day from January 20 to February 7, 2018, for herself, her son, and her granddaughter, and the agency has raised a concern about the absence of receipts in support of the claimed costs. M&IE per diem is an “allowance,” 41 CFR 301-11.101, calculated by reference to “[t]he M&IE rate applicable for the TDY location or stopover point.” *Id.* 301-11.102; *see id.* 302-4.200 (adopting FTR sections 301-11.100 through -11.102 for use in calculating PCS M&IE per diem entitlements). It is payable to a traveler without expense itemization or receipts. *Henry W. Stout*, CBCA 3743-TRAV, 14-1 BCA ¶ 35,579, at 174,356. The daily M&IE for Baltimore County for January and February 2018 was \$69 per day, an amount to which Ms. Clark-Burnside is entitled for the nineteen-day length of her delayed stay (for a total of \$1311). Pursuant to FTR 302-4.206, “[i]mmediate family members” age twelve and older traveling with a transferring employee “receive three-fourths of [the] per diem rate,” 41 CFR 302-4.206, and the FTR defines “immediate family” as including “grandchildren” under the age of 21 “who are under legal guardianship of the employee” so long as they will be “members of the employee’s household at the time [the employee] reports for duty at the

new [PDS].” *Id.* 300-3.1. Ms. Clark-Burnside’s dependent teenage granddaughter, who traveled with claimant from Kwajalein Atoll, fits within that definition, entitling her to 75% of the applicable Baltimore County per diem rate, or \$51.75 for each day of the nineteen-day delayed stay (for a total of \$983.25). *See id.* 302-4.206.

Although Ms. Clark-Burnside’s adult dependent son also fits within the FTR’s definition of “immediate family,” as the definition includes children of a transferring employee “who, regardless of age, are incapable of self-support,” 41 CFR 300.3.1, he is not entitled to M&IE per diem for the period before he departed Baltimore for Germany. While his mother was working in Kwajalein Atoll, he remained in Baltimore, and, although he has now joined his mother for the move overseas, his travel to Germany did not commence until he left Baltimore. Ms. Clark-Burnside cannot obtain any per diem for her son prior to his departure from Baltimore.

### Decision

Ms. Clark-Burnside’s claim for FTA is denied, but we find that she is entitled to travel cost reimbursement. The agency shall pay lodging costs of \$1540 that Ms. Clark-Burnside incurred outside Baltimore, Maryland, from January 20 to February 7, 2018; M&IE of \$1311 for Ms. Clark-Burnside for that same nineteen-day period; and M&IE of \$983.25 covering her granddaughter for that nineteen-day period.

In its briefing, the Army suggests that it may have already reimbursed Ms. Clark-Burnside for lodging costs and/or M&IE for February 7, 2018, as part of previously paid travel costs; if so, the Army may adjust this award to account for that prior reimbursement.

Harold D. Lester, Jr.  
HAROLD D. LESTER, JR.  
Board Judge