



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 22, 2020

CBCA 6764-RELO

In the Matter of GEORGE C. DEARING

George C. Dearing, Claimant.

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

SHERIDAN, Board Judge.

On September 15, 2019, claimant, George C. Dearing, transferred from his post at U.S. European Command (USEUCOM), Department of the Army (Army), to the Department of the Air Force (Air Force), in Florida. This matter involves the question of whether the Army can pay claimant temporary quarters subsistence allowance (TQSA) after he left the Army and began working for the Air Force.

Background

Claimant was employed at USEUCOM in Germany, until his separation from the Army, effective September 14, 2019, and his transfer to a position with the Air Force, in the United States, effective September 15, 2019. Claimant's travel orders (DD Form 1614) established the reporting date at his new permanent duty station (PDS) as September 15, 2019. Claimant's separation from the Army was effective on Saturday, September 14, 2019, the last day of a pay period, and his transfer to the Air Force was effective Sunday, September 15, 2019.

Prior to leaving the Army, claimant asserts that he was told by the USEUCOM authorizing official in Germany that he should travel during working hours. He stated, in relevant part that the approving official "instructed me that I should perform my PCS

[permanent change of station] travel on the first duty day of the next time period, Monday, 16 Sep 2019, so I would receive credit for my travel time.” He further stated “acting upon this advice, I scheduled my PCS travel accordingly, and contacted the [Air Force] Civilian Personnel Office to request in processing on 17 Sep 2019, because I would be traveling on the 16th. The request was approved [by the Air Force].”¹ Claimant flew on government procured air transportation to Florida on September 16, 2019, and entered temporary quarters on that date. He reported for duty with the Air Force in Florida on September 17, 2019.

Claimant sought reimbursement for his outgoing TQSA, including September 15, 2019. Defense Finance and Accounting Service (DFAS) rejected the claim because the claim included the day of September 15, 2019. USEUCOM directed claimant to correct his TQSA claim to remove September 15th from the claim so that it could be processed for the period of August 30, through September 14, 2019.

As basis for denying TQSA for September 15, 2019, the Army posited that as of September 15th claimant already belonged to his new employing agency, the Air Force, and “[the Army] is unable to pay him because he was already on his new organization’s payroll . . . claimant departed his previous organization as of September 14, 2019, the date he separated from the Army.”

Claimant refused to submit the directed correction, and insisted that he was entitled to be paid TQSA for September 15, 2019. Extensive e-mail communication ensued between claimant, USEUCOM, and DFAS, resulting in claimant filing a claim with the Board. Claimant requests that the Board direct the Army to authorize payment of TQSA for September 15th.

Discussion

At issue here is the Army’s position that because claimant was no longer an Army employee, it is unable to authorize outgoing TQSA to reimburse claimant for the lodging and meal expenses he incurred on September 15, 2019. The Army does not dispute claimant’s

¹ The USEUCOM authorizing official in Germany that claimant says he spoke to states that she did not provide such advice but may have been misunderstood by claimant to mean that September 16, 2020, could be used as a travel day. There is no document that supports claimant’s position that the Army approved TQSA for a period that was post-separation from the Army.

entitlement to TQSA for August 30 through September 14, 2019, and has offered no compelling reason why it did not make payment on the amount it agrees claimant is due.²

“Congress has authorized agencies to pay a TQSA to employees in foreign areas who live in temporary quarters and are not provided Government owned or rented quarters without charge.” *Okyon Kim Ybarra*, GSBCA 15407-RELO, 01-1 BCA ¶ 31,334 (2001); *see* 5 U.S.C. § 5923(a)(1) (2012). “The President has delegated to the Secretary of State authority to issue regulations which implement statutes providing for overseas pay differentials and allowances, including TQSA.” *Okyon Kim Ybarra*; *see* Exec. Order No. 10,903, § 2, 3 CFR 433.434 (1959-1963), *reprinted as amended in* 5 U.S.C. § 5921(1994). Those regulations are set forth in the Department of State Standardized Regulations (DSSR), which “have the force and effect of law.” *Gordon D. Giffin*, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100 (1998).

DSSR 040 sets forth several definitions, which are consistent with the statute, including, but not limited to:

d. “Government agency” means: (1) each executive department of the Government, (2) each independent establishment or agency in the executive branch of the Government, including each corporation wholly owned (either directly or through one or more corporations) by the Government, (3) the General Accounting Office, and (4) the Library of Congress.

See https://aoprals.state.gov/content.asp?content_id=146&menu_id=75. “Employee” means an employee in or under an agency and more specifically defined by regulations prescribed by the President. *Id.* Neither the statute nor the regulation define a “military department” as an agency.³

² USEUCOM asserts that claimant did not offer an explanation as to why he left on September 16, 2020, until after he appealed the denial to the Board.

³ We are unclear why the DSSR’s terminology and definitions differ from the terms and definitions used in the Federal Travel Regulation (FTR). For the purposes of relocation benefits not governed by the DSSR, the statute provides that an “agency” means an executive agency and an “employee” means an individual employed in or under an agency. 5 U.S.C. § 5721 (1)(A), (2) (2012). Consistent with the statutory definition in 5 U.S.C. § 5721, for the purpose of its relocation provisions the FTR defines “agency” to include:

(1) An executive agency as defined in Title 5, U.S.C. § 105 [an Executive

It is unclear why DSSR 124.2d uses the term “Federal agency” instead of “Government agency” or just “agency”. That portion of the DSSR provides that “[a] temporary quarters subsistence allowance granted immediately preceding the employee’s final departure from the post shall terminate as of the earliest of the following dates . . . d. the date of separation from a Federal agency.”⁴

Our reading of the DSSR and the underlying statute leads to a seemingly odd result in which the Army has the discretion to pay claimant TQSA for a day when he was working for the Air Force. This result follows from the DSSR’s definition of “agency” at the Executive department level rather than the military department level.

Notwithstanding our determination that the Army can pay claimant TQSA for September 15, 2020, the granting of the various allowances is a discretionary matter, such that “the agency can properly limit TQSA reimbursement when it adjudicates a claim.” *Lynn A. Ward*, CBCA 2904-RELO, 13 BCA ¶ 35,276 (2013); *see also Michael J. Krell*, GSBCA 13710-RELO, 98-2 BCA ¶ 30,050 (1997). The Army indicated that it would have been willing to reimburse claimant had it been able to do so, so we see no reason to remand this matter back to the Army for proper exercise of its discretion. Accordingly, we grant the claim.

Decision

The claim for reimbursement of TQSA for September 15, 2019, is granted.

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

department, a Government corporation, and an independent establishment];

(2) A military department.

41 CFR 300-3.1 (2019).

⁴ See https://aoprals.state.gov/content.asp?content_id=146&menu_id=75.