



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 12, 2021

CBCA 6943-RELO

In the Matter of ALEX H.

Alex H., Claimant.

Scott Manning, Human Resources Office, Department of the Navy, FPO Area Europe, appearing for Department of the Navy.

BEARDSLEY, Board Judge.

Claimant was issued permanent change of station (PCS) orders to report to Naval Support Activity Bahrain from Atlanta, Georgia. Claimant seeks the pre-departure subsistence expense portion of the federal transfer allowance (FTA) for costs incurred during a ten-day stay in Raleigh, North Carolina, after his final departure from his post of assignment en route to Bahrain. The agency denied claimant's request, finding that the costs were not eligible for reimbursement as FTA. Claimant submitted this claim to the Board. For reasons detailed below, we deny the claim.

Background

On August 5, 2020, the Department of the Navy issued PCS orders to claimant, which required him to report to Bahrain on or about August 30, 2020. This was claimant's initial appointment with the Department of Defense. Claimant resided in Atlanta. Claimant's PCS orders identified this location as the "Releasing Official Station and Location, or Actual Residence."¹ The PCS orders required claimant to fly from Atlanta to Baltimore, Maryland, and then from Baltimore to Bahrain, and authorized "FTA - Subsistence Expense (10 days)."

¹ The PCS orders also identified Houston, Texas, as claimant's actual place of residence.

Before his travels began, claimant changed his first flight to depart from Raleigh instead of Atlanta. Claimant says that he made this change and drove to Raleigh with his household goods (HHG) on August 23, 2020, because he had broken his lease in Atlanta, had nowhere to stay in Atlanta, had been told that he could stay anywhere in the U.S. during the ten days before he left for Bahrain, the movers were not available to pick up his HHG until October 2020, and he had medical issues. Claimant stayed in a hotel in Raleigh from August 24 to September 2, 2020. On September 2, 2020, claimant flew from Raleigh to Baltimore. The following day, claimant flew out of Baltimore to Bahrain.

After arriving in Bahrain, claimant requested FTA in the amount of \$1223.10 for the pre-departure subsistence expenses he incurred after August 23, 2020. Claimant indicated that he had saved the Government money by staying in and flying out of Raleigh because the per diem rate in Raleigh was less than Atlanta, and the flight to Baltimore from Raleigh was cheaper than the flight from Atlanta. On October 6, 2020, the agency informed claimant that it cannot authorize FTA for his stay in Raleigh because his final departure was not from Atlanta. Claimant subsequently submitted his claim to the Board. The agency filed a response to claimant's claim explaining that it cannot pay claimant's pre-departure FTA claim of \$1223.10 for his stay in Raleigh because he made his final departure from his U.S. post of assignment, Atlanta, before incurring the pre-departure subsistence expenses in Raleigh. We agree with the agency.

Discussion

“The FTA is paid pursuant to implementing regulations issued by the Secretary of State and set out in the Department of State Standardized Regulations (DSSR).” *John E. Gartland*, CBCA 6880-RELO, 20-1 BCA ¶ 37,698 (quoting *Gregory J. Bird*, GSBCA 16110-RELO, 04-1 BCA ¶ 32,425 (2003)). The DSSR 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). An employee is eligible for pre-departure FTA for “lodging, meals (including tips), laundry, cleaning and pressing expenses in temporary quarters . . . for up to 10 days before final departure from a post in the United States to a post in a foreign area, beginning not more than 30 days after they have vacated residence quarters.” DSSR 241.2(c). These pre-departure subsistence expenses can be incurred “anywhere in the U.S. . . . as long as employee . . . [has] not begun travel on orders and final departure is from the U.S. post of assignment.” DSSR 242.3(c).

An employee is not entitled to FTA for pre-departure subsistence expenses incurred after an employee's final departure from his post of assignment. *See Lee Ethel Edwards*, CBCA 5446-RELO, 17-1 BCA ¶ 36,643; *Gregory P. Walker*, CBCA 5496-RELO, 17-1 BCA

¶ 36,594 (2016); *Patrick S. Horan*, CBCA 5424-RELO, 16-1 BCA ¶ 36,515. In *Horan*, the Board noted that:

When read in conjunction with DSSR 242.1(c), it is clear that the language in DSSR 242.3(c) means only that, once the employee and his 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. The provision cannot mean that the employee is required directly to depart the United States itself from the U.S. post of assignment The Army’s application of a requirement for a “final departure” from the United States itself from the airport closest to the original United States post of assignment finds no support in the DSSR.

Thus, the dispositive issue in deciding entitlement to FTA is identifying when claimant finally departed from his U.S. post of assignment. *Patrick S. Horan*.

Here, claimant and claimant’s travel orders identified Atlanta as his U.S. post of assignment. Thus, claimant made his final departure from his U.S. post of assignment on August 23, 2020, when he drove to Raleigh. As a result, claimant is not entitled to FTA pre-departure subsistence expenses for the costs claimed since these costs were incurred after he departed Atlanta. “[T]he regulations governing the FTA are unforgiving,” and “they 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. The fact that claimant’s decision to change his departure to Raleigh may have saved the agency money does not allow the Board to “waive statutory and regulatory limitations on reimbursement.” *Mark R. Green*, CBCA 6207-RELO, 18-1 BCA ¶ 37,128. Moreover, even if claimant was told that he was entitled to FTA and that he could stay anywhere in the U.S. for the ten days before he left for Bahrain, “[t]he Government is not bound by the erroneous advice of its officials, even when the employee has relied on this advice to his detriment.” *Jason N. Fischell*, CBCA 6706-RELO, 20-1 BCA ¶ 37,591 (quoting *Daryl J. Steffan*, CBCA 3821-TRAV, 14-1 BCA ¶ 35,734). We, therefore, cannot grant FTA for the period of August 23 through September 2, 2020. The agency, however, should consider reimbursing claimant for his expenses incurred on those days as costs of travel. *MarieLouise R. Assing*; *Gregory P. Walker*; *Debra C. Clark-Burnside*, CBCA 6450-RELO, 19-1 BCA ¶ 37,442.

Decision

The claim is denied.

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge