



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 25, 2024

CBCA 7888-RELO

In the Matter of GREGORY T.

Gregory T., Claimant.

Connie J. Rabel, Director, Travel Mission Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

O'ROURKE, Board Judge.

A federal employee and his family moved from the United States to Australia on official government business. During the flight from Los Angeles to Australia, the aircraft experienced mechanical problems and had to return to Los Angeles, where passengers were booked on a different flight. The delay caused the employee to forfeit the first night of temporary quarters at the new duty station in Australia. The agency denied the employee's request for reimbursement of the charge for the forfeited night because it was incurred prior to his arrival in Australia. Although we agree with denying the charge under the temporary quarters subsistence allowance (TQSA), we grant the claim as a relocation expense.

Background

Pursuant to permanent change of station (PCS) orders, the Department of Defense transferred claimant and his family from Florida to a new duty station in Adelaide, Australia. Claimant's orders authorized sixty-nine days of TQSA in Adelaide to look for permanent housing. Claimant and his family had a projected date of arrival in Adelaide of October 11, 2022. Claimant made reservations in temporary quarters to begin that day. Due to mechanical problems with the plane, however, he and his family arrived in Adelaide one day later, on October 12, after more than sixty hours of traveling across multiple time zones,

including crossing the international date line.¹ The family checked into temporary quarters upon arrival and remained there for the full sixty-nine days.

Claimant subsequently filed a travel voucher seeking reimbursement of travel-related PCS expenses. Although he and his family stayed in temporary quarters for the sixty-nine days they were authorized, the reservation began on their *projected* arrival date, not on their actual arrival date, so claimant was charged for seventy days of lodging instead of sixty-nine. On his travel voucher, claimant sought reimbursement for the full cost of his lodging in temporary quarters, including the charge for the missed day. The agency granted all but \$203.52, explaining that TQSA only covers lodging expenses incurred *after* an employee arrives in country, which in this case was October 12. Claimant challenged the agency's decision. The agency requested an advance decision from the Board on behalf of claimant.

Discussion

Under 31 U.S.C. § 3529 (2018), an agency disbursing or certifying official may request from the Board an advance decision on a question involving a payment the official will make or a voucher that the official has received concerning an employee's travel or relocation expenses. Board Rule 502 provides that an agency may request such a decision from the Board as long as it concerns a claim made against the United States by a federal civilian employee for reimbursement of expenses incurred while on official temporary duty travel or in connection with relocation to a new duty station. 48 CFR 6105.502(a) (2023); *see Bianca Moebius-Clune*, CBCA 5352-TRAV, 16-1 BCA ¶ 36,506, at 177,864. The request "must refer to a specific payment or voucher," and "it may not seek general legal advice." *Bianca Moebius-Clune*, 16-1 BCA at 177,865 (citing Rule 502(a)). Since this case meets both of those requirements, the Board may consider it.

¹ The itinerary for claimant's official travel had the family flying from Orlando, Florida, to Los Angeles, California, on October 9, 2022; then from Los Angeles to Sydney, Australia, that same day; and finally from Sydney to Adelaide, their final destination. The flight from Orlando arrived in Los Angeles on time. The flight from Los Angeles to Sydney boarded on time for the 10:45 p.m. departure, but then sat on the runway for an extended period, departing just before midnight. One hour into the flight, the plane returned to Los Angeles after the pilot reported there was a mechanical issue with the aircraft. The family arrived back in Los Angeles at 2:00 a.m. on October 10, which was 7:30 p.m. on October 10 in Australia. (Traveling west from Los Angeles to Australia crosses the international date line, which results in a loss of one day.) Even before claimant and his family boarded the first flight to Australia, less than twenty-four hours remained until check-in time.

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. 5 U.S.C. § 5923(a). The regulations governing overseas pay and allowances, including TQSA, are set forth in the Department of State Standardized Regulations (DSSR), which “have the force and effect of law.” *Miriam E. Bolaffi*, CBCA 4029-RELO, 15-1 BCA ¶ 35,962, at 175,716 (citing *Gordon D. Giffin*, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100, at 148,956). For civilian employees of the Department of Defense in foreign areas, the Joint Travel Regulations (JTR) also refer to the DSSR for TQSA authority. JTR 054205 (Oct. 2022); *David G.*, CBCA 7823-RELO, 24-1 BCA ¶ 38,519.

Section 122.1 of the DSSR states that TQSA is intended to cover the reasonable costs of “hotel . . . or other transient-type quarters at the post of assignment . . . for a period not in excess of 90 days *after* first arrival at a new post of assignment in a foreign area.” (Emphasis added.) Since claimant is seeking reimbursement of a lodging cost that he incurred *prior* to arriving in Adelaide, the agency was correct to deny TQSA for that cost.

Nevertheless, the Board has previously found that such a cost is reimbursable as a travel expense. In *Debra C. Clark-Burnside*, CBCA 6450-RELO, 19-1 BCA ¶ 37,442, a federal employee working for the Army was moving from one overseas duty station to another, but she had to return to the United States to obtain passports for her dependents in Baltimore. The passports took longer than expected to issue, and she incurred additional travel expenses as a result of the delay. Because she had already departed her former duty station, however, she could not claim the additional travel expenses under the Foreign Transfer Allowance (FTA), which is located at DSSR sections 240 through 245. Nor would the expenses be covered under any TQSA since she had not yet arrived at her new duty station in Germany. The expenses were actually incurred when she was waylaid in Baltimore—a travel delay that was beyond her control. There, as in the instant case, the agency denied the cost because it did not qualify under a particular allowance. The Board disagreed, explaining that an employee’s entitlement to per diem begins on the day the employee departs the former duty station and ends upon arrival at the new duty station. *Id.* at 181,957 (citing *Byron L. Craig*, CBCA 6481-TRAV, 19-1 BCA ¶ 37,390, at 181,776); *see* 41 CFR 301-11.9 (2022) (FTR 300-3.1)); *see also* JTR 0539 (“Per diem is payable for situations such as delays for reasons beyond the civilian employee’s control . . . [and] necessary delays awaiting further transportation.”). The Board granted the employee’s claim for additional per diem, including lodging.

The Board similarly decided the case of another Army employee who was moving from Arizona to Germany with his family. *See Scott Larsen*, CBCA 5732-RELO, 17-1 BCA ¶ 36,860. In that case, the employee incurred additional lodging costs when delivering his

car to the vehicle processing center in San Diego before flying to Baltimore to catch the Government-charted flight to Germany. The agency denied the additional travel expenses because they were incurred after the employee departed his former duty station in Arizona but before arriving in Germany. The Board agreed with the agency that his expenses were not properly classified under the FTA or TQSA. Nonetheless, the Board granted the claim, finding that the additional expenses could be paid as relocation expenses incident to his move to Germany. *Id.* at 179,600-01.

We see no reason not to follow this approach to decide the instant case, which involves a lodging expense incurred by claimant after departing his former duty station but before arriving at his new one. The fact that the expense involves a forfeited lodging cost at the new duty station makes no difference. “The Government will reimburse its travelers for the cost of forfeited hotel reservations where the lodgings were not used because of unforeseen circumstances, so long as the employees have exercised reasonable prudence.” *Geepy Pe*, CBCA 5031-TRAV, 16-1 BCA ¶ 36,331, at 177,121 (where the employee was charged for five days of unused lodging after the hotel refused to waive the thirty-day notice of cancellation policy, the Board granted reimbursement since the cost was incurred incident to official travel and the employee incurred the charges through no fault of his own); *William J. Dearing*, GSBCA 14578-TRAV, 98-2 BCA ¶ 29,858, at 147,770 (traveler was reimbursed for a “no-show lodging fee” when his official travel was cancelled five days before the trip commenced and it was too late to cancel the reservations without incurring a penalty).

In the line of cases cited by the Board, the primary factors in favor of paying the fees were: 1) that the circumstances were beyond the control of the employee (unforeseen circumstances), and 2) that the employee acted with reasonable prudence in attempting to mitigate the cost. *Mary S. Carroll*, GSBCA 14280-RELO, 97-2 BCA ¶ 29,309, at 145,748; *Alexander Kunzer*, GSBCA 14102-TRAV, et al., 97-2 BCA ¶ 29,137. Under the circumstances here, claimant and his family traveled the direct route, flying from Orlando, to Los Angeles, to Australia. There is no question that the flight delay was beyond his control. It is also evident from the record that when the plane was forced to return to Los Angeles, it was already too late to change the reservation.

With the exception of the lodging charge, the agency paid claimant and his family per diem during the travel delay. Simply because the lodging expense involved a forfeited charge at the new duty station does not preclude payment. Per diem is a daily payment which covers travel expenses, including meals, lodging, and related incidental expenses. *Jordan D. Jones*, CBCA 6663-TRAV, 20-1 BCA ¶ 37,697, at 183,016; 41 CFR 300-3.1. The JTR instructs travelers to “[c]ompute per diem for all PCS travel using the Lodging Plus method. Per diem is the actual amount the civilian employee pays for lodging plus an allowance for [meals and incidental expenses] for each travel day.” JTR 053901-A. Here, the lodging

expense was incurred during PCS travel and is covered by the employee's per diem allowance.

Decision

The claim is granted. The agency shall reimburse claimant for his lodging expense in the amount of \$203.52.

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge