

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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June 8, 2001

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GSBCA 15404-RELO

In the Matter of LEE A. GARDNER

Lee A. Gardner, Woodbridge, VA, Claimant.

Bonnie J. Britten, Chief, Travel Policy Division, Department of Veterans Affairs, Washington, DC, appearing for Department of Veterans Affairs.

**WILLIAMS**, Board Judge.

An employee whose travel orders erroneously authorized reimbursement at a higher per diem rate than is permitted by regulation may not be reimbursed in excess of the amount established by regulation.

## Background

Effective March 12, 2000, claimant, Lee A. Gardner, a personnel management specialist with the Department of Veterans Affairs (VA), was transferred from Topeka, Kansas, to Washington, D.C. Claimant was authorized certain expenses associated with her transfer, including real estate transaction expenses, temporary quarters subsistence expenses (TQSE), en route travel, and per diem expenses. Claimant's travel authorization contained an error with respect to her TQSE allowance. The authorization provided that Ms. Gardner was authorized "an en route per diem rate in lieu of subsistence and a per diem rate for her family . . . not to exceed \$164, \$123 (spouse)." She was also authorized TQSE for herself and her family for sixty days at an estimated cost of \$7200. According to the VA, she should have been authorized the PCS rate of \$85 for herself and \$63.75 for her spouse, which includes miscellaneous and incidental expenses (M&IE) and lodging. Claimant expended lodging costs of \$12 per day above these limits and seeks reimbursement of \$564.

## Discussion

As claimant and the agency recognize, claimant's travel orders erroneously authorized reimbursement for her TQSE at the travel per diem rate instead of at the TQSE rate. The governing regulations for TQSE provide:

**§ 302-5.100 What am I paid under the actual TQSE reimbursement method?**

Your agency will pay your actual TQSE incurred, provided the expenses are reasonable and do not exceed the maximum allowable amount. The "maximum allowable amount" is the "maximum daily amount" multiplied by the number of days you actually incur TQSE not to exceed the number of days authorized, taking into account that the rates change after 30 days in temporary quarters. The "maximum daily amount" is determined by adding the rates [specified] for you and each member of your immediate family authorized to occupy temporary quarters.

This regulation further provided that claimant would receive the "applicable per diem rate" for temporary quarters and her accompanied spouse would receive .75 times the "applicable per diem rate" for the first 30 days and .5 times the "applicable per diem rate" for any additional days of TQSE.

FTR Section 302-5.102 provides:

**§ 302-5.102 What is the "applicable per diem rate" under the actual TQSE reimbursement method?**

The "applicable per diem rate" under the actual TQSE reimbursement method is as follows:

For temporary quarters located in the continental United States (CONUS).

The applicable per diem rate is the standard CONUS rate.

The applicable CONUS rate for March 2000 was \$85 per day which included \$55 for lodging and \$30 for M&IE. 41 CFR Ch. 301 App. A (2000). In contrast, the temporary duty travel allowance per diem for the Washington, D.C., area, which was included in claimant's travel authorization, was \$164, representing \$118 for lodging and \$46 for M&IE. Id. Unfortunately, claimant is not entitled to recover in an amount above the regulatory maximum even though the agency erred in preparing her travel orders. See Raymond W. Martin, GSBCA 15433-RELO, 01-BCA ¶ 31,292 (agency properly limited TQSE reimbursement to \$85 per day, though employee spent considerably more while occupying temporary quarters).

It is well established that an agency may not alter travel orders retroactively to authorize recoupment of an expense that is not permitted by statute or regulation or to increase or decrease entitlements fixed by statute or regulation. Thomas W. Schmidt, GSBCA 14747-RELO, 00-1 BCA ¶ 30,858; Daniel P. Carstens, GSBCA 14519-RELO, 98-2 BCA ¶ 30,048; Michael K. Vessey, B-214886 (July 3, 1984); Erwin E. Drossel, B-203009 (May 17, 1982). Here, the agency's travel authorizing personnel mistakenly entered the wrong per diem rate on claimant's travel authorization. Such mistake does not operate to expand the entitlement to reimbursement established by regulation. The Government is not bound by the erroneous advice of its officials even when the employee has relied on this advice to his detriment. E.g., John J. Cody, GSBCA 13701-RELO,

97-1 BCA ¶ 28,694 (1996). Erroneous travel orders, reflecting mistaken assumptions on the part of authorizing officials, cannot obligate the Government to expend monies contrary to regulation. Charles M. Ferguson, GSBCA 14568-TRAV, 99-1 BCA ¶ 30,299; James F. Black, GSBCA 14548-RELO, 98-2 BCA ¶ 29,876; William Archilla, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799.

Decision

The claim is denied.

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MARY ELLEN COSTER WILLIAMS  
Board Judge