

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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April 24, 2002

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GSBCA 15747-RELO

In the Matter of CHARLES ANDERSON III

Charles Anderson III, Alameda, CA, Claimant.

Edgardo Aviles, Chief, Travel Section, National Finance Center, United States Customs Service, Indianapolis, IN, appearing for Department of the Treasury.

**DANIELS**, Board Judge (Chairman).

Charles Anderson III, an employee of the United States Customs Service, asks us to review his agency's determinations as to reimbursement of costs he incurred in relocating from one permanent duty station to another. Mr. Anderson characterizes the dispute as being about repayment of the expenses of a househunting trip, and the Customs Service focuses on payment of temporary quarters subsistence expenses (TQSE). Payments for the two kinds of costs are interrelated, and the agency has calculated them correctly.

## Background

In May of 2001, the Customs Service reassigned Mr. Anderson from its Office of Investigations, Denver, Colorado, to the Office of Internal Affairs, San Francisco, California. The actual location of the "San Francisco" office is in Alameda, California. Alameda is on the east side of San Francisco Bay, adjoining Oakland.

Customs had entered into an arrangement with Cendant Mobility Services to advise employees as to relocation benefits and to prepare orders authorizing payment of those benefits. The agency offered Mr. Anderson reimbursement for both the costs of a househunting trip and TQSE. The Cendant representative assigned to Mr. Anderson noted on the orders that Mr. Anderson had selected the fixed amount reimbursement method for both these categories of expenses. Mr. Anderson told the representative that he was moving to the agency's San Francisco office, which was located in Oakland. The representative listed on the orders, for each of the expense categories, an estimated amount which was based on the Federal Travel Regulation's (FTR's) daily allowance for lodging and meals and incidental expenses for travelers to San Francisco. See 41 CFR ch. 301, app. A (2001). These orders were approved by a Customs official. Customs gave Mr. Anderson an advance payment of

\$6,150, which was the amount calculated by the Cendant representative as the fixed amount reimbursement for TQSE for him and his daughter in San Francisco.

In the fall of 2001, Mr. Anderson took a househunting trip to the San Francisco Bay area, returned to Denver, and then moved west. He submitted a voucher for reimbursement of his househunting trip expenses, which he calculated to be \$852.12. Instead of paying Mr. Anderson this amount, Customs told him that he owed the agency \$141.88 and that it would apply this outstanding balance to his next claim for relocation benefits.

According to Customs, the agency had overpaid Mr. Anderson for TQSE and owed him more than he had claimed for househunting trip expenses. The TQSE should have been calculated with reference to the FTR's daily allowance for Oakland, not San Francisco. As a result, Mr. Anderson should have received \$4,680, rather than \$6,150, in TQSE. The househunting trip expenses should have been calculated in accordance with the fixed amount reimbursement method, which Mr. Anderson had been authorized, rather than applying a per diem allowance, as the employee had done. As a result, Mr. Anderson should have received \$1,328.12, rather than \$880.62,<sup>1</sup> in househunting trip expenses. The upshot of these changes, Customs says, is that for the two categories of expenses combined, Mr. Anderson may receive only \$6,008.12 (\$4,680 plus \$1,328.12) – \$141.88 less than the advance he has already been paid.

#### Discussion

The Customs Service has properly understood the FTR provisions which are applicable to this situation.

A "househunting trip" is "a trip made by the employee and/or spouse to the new official station locality to find permanent living quarters to rent or purchase." 41 CFR 302-4.1.<sup>2</sup> An employee (and/or spouse) is eligible to receive an allowance for such a trip if he is authorized to transfer, both his old and new official stations are located in the United States, he is not assigned to Government or other prearranged housing at his new official station, and his old and new official stations are seventy-five or more miles apart via a usually traveled surface route. Id. 302-4.3. An agency may authorize one round trip for such an employee and/or spouse in connection with a particular transfer. Id. 302-4.5, -4.8.

An agency must always reimburse an employee and/or spouse for transportation expenses incurred in connection with an authorized househunting trip. Subsistence expenses

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<sup>1</sup>The expenses listed by Mr. Anderson on his voucher total \$880.62, not the \$852.12 claimed on the voucher. The employee ignored the last day's allowance for meals and incidental expenses, \$28.50, when totaling his costs.

<sup>2</sup>We cite to the FTR provisions which were in effect at the time Mr. Anderson moved to California. The regulatory provisions which address househunting trip expenses are now contained in part 302-5 of the FTR. 66 Fed. Reg. 58,194, 58,213 (Nov. 20, 2001). The provisions discussed in this decision remain substantively unchanged from the rules we cite here.

must always be reimbursed as well, but the calculation of the appropriate amount of reimbursement may vary. Agencies may always repay subsistence allowances through a per diem allowance for the employee and/or spouse. An agency may also offer an employee the alternative of choosing the fixed amount option. If the fixed amount option is offered and the employee selects it, the agency pays him the applicable locality per diem rate multiplied by a specified factor – 6.25 if the employee and his spouse both take the trip, five if only one of them travels. 41 CFR 302-4.13, -4.103.

Customs offered Mr. Anderson the fixed amount option for reimbursement of subsistence expenses on his househunting trip, and he selected it. He took a househunting trip to Oakland alone. The per diem rate for Oakland, in the fall of 2001, was \$156 per day. 41 CFR ch. 301, app. A. This rate times the specified factor of five equals \$780. Mr. Anderson incurred \$548.12 in transportation expenses on this trip. The fixed amount for subsistence expenses plus the actual amount of transportation expenses equals the amount calculated by Customs, \$1,328.12.

TQSE are "subsistence expenses incurred by an employee and/or his/her immediate family while occupying temporary quarters." 41 CFR 302-5.2.<sup>3</sup> An employee is eligible to receive a TQSE allowance if he is authorized to transfer, his new official station is located in the United States, and his old and new official stations are forty or more miles apart via a usually traveled surface route. *Id.* 302-5.4.<sup>4</sup> Whether an employee will be authorized a TQSE allowance is within his agency's discretion. *Id.* 302-5.6, -5.7.

An agency may reimburse an employee for TQSE under the actual expense method (actual expenses, provided they are both reasonable and do not exceed the maximum allowable amount established by regulation). 41 CFR 302-5.11, -5.100 to -5.102. An agency may also offer an employee the alternative of choosing the fixed amount option. If the fixed amount option is offered and the employee selects it, the agency pays him, for each day in temporary quarters, the FTR's maximum per diem rate "for the locality of the new official duty station" multiplied by a specified factor – .75 for the employee and .25 for each member of his immediate family. *Id.* 302-5.11, -5.200, -5.201, -5.304.<sup>5</sup>

Customs offered Mr. Anderson the fixed amount option for TQSE, and he selected it. He and his daughter lived in temporary quarters in Alameda for at least thirty days. The per diem rate for Oakland, \$156, times the specified factor of .75 equals \$3,510. This is the

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<sup>3</sup>The regulatory provisions which address TQSE are now contained in part 302-6 of the FTR. 66 Fed. Reg. at 58,215. The provisions discussed in this decision remain substantively unchanged from the rules we cite here, with one exception noted in footnote 4.

<sup>4</sup>An employee is now eligible for TQSE only if his old and new official stations are fifty (rather than forty) miles or more apart. 66 Fed. Reg. at 58,216.

<sup>5</sup>A significant difference between the actual expense method and the fixed amount option, not relevant to this case, is that actual expenses may be paid for as many as 120 days, whereas the fixed amount may be paid for no more than thirty days. 41 CFR 302-5.104, -5.200.

amount Customs owes Mr. Anderson in TQSE for himself. That same rate times the specified factor of .25 equals \$1,170. This is the amount the agency owes him in TQSE for his daughter. The total of these two amounts, \$4,680, is the amount calculated by Customs as the agency's obligation to the employee for TQSE.

It is of course regrettable that Customs (through its contractor, Cendant Mobility) told Mr. Anderson that he would receive for TQSE a larger amount than the sum which it later calculated, properly, in accordance with applicable regulations. The mistake is especially unfortunate because Mr. Anderson says that he would not have spent as much as he did for temporary housing if he had known before moving to California that he would ultimately receive as little as he did. The fact that the error occurred does not create any authority in the agency or this Board to give the employee any more money than the amount to which he is entitled under the law, however. As we have explained on several occasions:

In considering claims like this one, . . . the arbiter must balance the harm the employee would suffer if the claim were denied against the damage which would result to our system of government if federal officials were free to spend money in ways which are contrary to the strictures of statute and regulation. In making this balance, the Supreme Court has clearly come down on the side of protecting our system of government. We follow the Court in holding that although [the employee] has undeniably relied to his detriment on [the agency's] promises, he may not be reimbursed because the law prevents the agency from honoring commitments made in its name by officials who do not have the power to make them.

Louise C. Mâsse, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694 (2001) (citing Gary MacLeay, GSBCA 15394-RELO, 01-1 BCA ¶ 31,210 (2000); Pamela A. Mackenzie, GSBCA 15328-RELO, 01-1 BCA ¶ 31,174 (2000); George S. Page, GSBCA 15114-RELO, 00-1 BCA ¶ 30,707 (1999) (all citing Office of Personnel Management v. Richmond, 496 U.S. 414 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947)).

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STEPHEN M. DANIELS  
Board Judge