

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 15, 2003

GSBCA 15996-RELO

In the Matter of PHYLLIS J. NASADOS

Phyllis J. Nasados, Mammoth Cave, KY, Claimant.

C. Bruce Sheaffer, Comptroller, Accounting Operations Center, National Park Service, Department of the Interior, Washington, DC, appearing for Department of the Interior.

GOODMAN, Board Judge.

Claimant, Phyllis J. Nasados, is an employee of the Department of the Interior, National Park Service. She seeks this Board's review of the agency's denial of reimbursement of expenses incurred in a permanent change of station (PCS) move from Fort Carson, Colorado, to Mammoth Cave, Kentucky.

Factual Background

Claimant was approved to be reimbursed the usual expenses related to a PCS. Her travel orders contained approval for temporary quarters subsistence expenses (TQSE) not to exceed thirty days, and indicated that claimant should report to the new duty station on or about January 14, 2001. Claimant departed her old duty station of Fort Carson, Colorado, on January 18, 2001, and arrived at a family member's residence in Kentucky on January 19, 2001. She decided to stay there until she could find suitable temporary housing to accommodate her son and dogs. Claimant moved into a hotel in Bowling Green, Kentucky, on March 8, 2001, and remained there until she moved into permanent housing on July 9, 2001. Despite only receiving approval for reimbursement of thirty days of TQSE, she is seeking reimbursement for TQSE for the period March 8 through July 9, 2001.

On May 25, 2001, the agency received a voucher from claimant in the amount of \$2550 for thirty days of TQSE (March 8 through April 6, 2001). The voucher was approved and claimant received payment in the amount of \$1837.80 in late June. On June 2, 2001, and February 22, 2002, the agency received two additional vouchers from claimant for TQSE, one for \$1912.46 (April 7 through May 5, 2001) and the other for \$4080 (May 6 through July 9, 2001), but neither was processed. In its submittal to this Board dated January 8, 2003, the agency states:

The [agency] informed the claimant that in reviewing her second claim, it was discovered that she did not begin occupancy of her temporary quarters within 30 days of reporting to her new duty station, which is required by the Federal Travel Regulations (FTR) and could not be reimbursed any TQSE. In addition, Ms. Nasados was informed that since she was erroneously reimbursed by AOC [Accounting Operations Center] for her first 30 days, she would be required to reimburse the NPS [National Park Service] for those costs and a bill of collection BC5000C0034 (for \$1,837.80) was issued on November 15, 2001 to recover those costs.

Chapter [sic] 302-5.2(e) of the FTR requires occupancy of temporary quarters to begin not later than 30 days from the date the employee reports to his/her new duty station, or if not begun during that period, not later than 30 days from the date the family vacates the residence at the old duty station. The Comptroller General (CG) ruled in Decision B-214757, dated September 5, 1984 that where an employee and his family stayed with acquaintances and didn't move into a hotel within 30 days of vacating their former residence and/or reporting to his new duty station, they were denied reimbursement. The CG further states that an allowance may only be paid as authorized by law and regulation and the fact that an employee was unaware of the restriction, or was provided erroneous information does not permit reimbursement which is not otherwise authorized. Therefore, the request for Ms. Nasados to be reimbursed the \$5,992.46 for TQSE through July 9, 2001 was denied.

Also, Ms. Nasados was already reimbursed \$1,837.80 by the AOC for expenses prohibited by Chapter [sic] 302-5.2(e) of the FTR and we are required by regulation to recover those costs. The CG has ruled that even though an employee was erroneously authorized reimbursement for expenses not allowed by regulation and the government paid those expenses, the employee had to repay the amounts that were erroneously paid. To complicate matters, since TQSE reimbursements are taxable and federal, state and FICA taxes were withheld and paid to those entities during calendar year 2001, Ms. Nasados will be required to reimburse those amounts (\$1,311.82) as well, since repayment was not made during the same calendar year (2001). In addition, Ms. Nasados was also informed that she could request a waiver from repayment of this bill (BC5000C0034 in the amount of \$1,837.80) from the Office of Hearings and Appeals, which will be amended to include the taxes if necessary.

While the circumstances of this case were unfortunate, we see no basis in law or regulation that would allow us to reimburse Ms. Nasados for these temporary quarters subsistence expenses.

Discussion

Under the Federal Travel Regulation (FTR) applicable to the period of claimant's PCS, an agency may authorize TQSE in thirty-day increments, in general not to exceed sixty days. 41 CFR 302-5.104 (2000). The FTR charges each individual agency with developing

policies and procedures governing when the agency will authorize TQSE for employees, who will determine if TQSE is appropriate in a particular situation, and how much TQSE should be authorized in given circumstances. Id. 302-5.301.

In its initial submission to this Board, the agency cited Section 302-5.2(e) of the FTR, which allegedly required occupancy of temporary quarters to begin not later than thirty days from the date the employee reports to his/her new duty station, or if not begun during that period, not later than thirty days from the date the family vacates the residence at the old duty station. As the agency noted, this section of the FTR was cited in a Comptroller General decision issued in 1984. The language of this section of the FTR does not exist in the FTR applicable at the time of claimant's PCS. When queried by the Board as to whether the appropriate regulations were applied, the agency admitted that they had cited regulations which were in effect in 1984, and further stated:

The National Park Service travel policy (both at the time of travel and current) requires that travelers begin occupancy of their temporary quarters no later than 30 days from the date they report for duty at their new duty station or not later than 30 days from the date their family vacates their old residence.

When Title 41 Chapter 302 (FTR) of the Code of Federal Regulations was revised on July 1, 1998 to a question and answer format, part 302-5 of the FTR that addresses TQSE allowances, the beginning of the eligibility period previously contained in Chapter 302-5.2(e) was not included We did not interpret this to imply that the previous requirement had changed and we continue to enforce that requirement for all NPS employees who relocate.

The agency submitted documentation indicating that internal agency policy published in an employees handbook at the time of claimant's travel and currently published is that employees must begin occupancy of temporary quarters not later than thirty days from the date they report for duty at their new official duty station or thirty days from the date the family vacates the residence at the old duty station.

The FTR applicable at the time of claimant's travel contained the following provisions:

§302-5.103 What is the latest period for which I claim actual TQSE can begin?

The period must begin before the maximum time for beginning allowable travel and transportation under § 302-1.6 of this chapter expires.

§ 302-1.6 Time Limits for beginning travel and transportation

All travel, including that for the immediate family, and transportation, including that for household goods, allowed under this chapter, shall be accomplished as soon as possible. The maximum time for beginning allowable travel and transportation shall not exceed 2 years from the effective date of the

employee's transfer or appointment except that: [exceptions provide for a longer period of time in certain circumstances].

The agency's policy that requires employees to begin occupancy of temporary quarters not later than thirty days from the date they report for duty at their new official duty station or thirty days from the date the family vacates the residence at the old duty station is clearly in conflict with the provisions of the FTR. The FTR only requires that the period for claiming TQSE begin within two years from the effective date of the employee's transfer.

The Board has addressed the application of an internal agency policy or rule that supplements the regulations promulgated in the FTR. We have recognized that the FTR is a "legislative rule," and that to the extent an internal agency policy is in conflict with the FTR, the internal guideline must give way. See Richard F. Crane, GSBCA 15782-RELO, 02-2 BCA ¶ 31,996; Edward Queair, GSBCA 15714-RELO, 02-1 BCA ¶ 31,757 (citing Vera A. Wood, GSBCA 15637-TRAV, 02-1 BCA ¶ 31,693 (2001)).

The claimant occupied temporary quarters within the time period allowed by the FTR. She reported to her new duty station on January 19, 2001, within days of her appointment, and immediately moved into temporary quarters at a family member's home. As she apparently was not paying rent to the family member, the first voucher claimant submitted for reimbursement was for the thirty day period, March 8 through April 6, 2001, which she spent in a hotel, after finding suitable quarters for herself, her son, and her two dogs. In Parul Patel, GSBCA 14953-RELO, 99-2 BCA ¶ 30,535, interpreting the same FTR provision, we held that the employee could request postponement of the start of her TQSE period, and need not begin claiming TQSE immediately upon entering temporary quarters. In the instant case, as claimant's travel orders authorized TQSE for thirty days, we see no reason why she should not be reimbursed for the thirty-day period for which she has claimed reimbursable costs and received reimbursement. As claimant was actually reimbursed for this period, such reimbursement was proper.

On the other hand, claimant's travel orders are clear that TQSE would not exceed thirty days. There is no basis for allowing reimbursement for the additional amounts which claimant seeks.

Decision

Claimant's was properly reimbursed for thirty days of TQSE as authorized by her travel orders. Her claim for additional TQSE is denied.

ALLAN H. GOODMAN
Board Judge