

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 24, 2003

GSBCA 16208-RELO

In the Matter of LORI GIANNANTONIO

Lori Giannantonio, Washington, DC, Claimant.

Edgardo Aviles, Chief, Travel Section, Bureau of Customs and Border Protection, Indianapolis, IN, appearing for Department of Homeland Security.

BORWICK, Board Judge.

Claimant is an employee of the Bureau of Customs and Border Protection (Customs or agency), Department of Homeland Security.¹ She transferred in the interest of the Government and chose the fixed amount method of reimbursement for temporary quarters subsistence expenses (TQSE). Before claimant's transfer, the agency authorized claimant \$4410 for thirty days of TQSE reimbursement, but after her transfer, it reduced claimant's reimbursement to compensate her for only three days, which was the number of days the agency determined claimant had remained in temporary quarters.

We grant the claim. The agency's reduction of claimant's fixed amount TQSE reimbursement violated pertinent provisions of the Federal Travel Regulation (FTR).

Background

Chronology

On July 25, 2002, the agency authorized claimant's transfer in the interest of the Government from San Diego, California, to Washington, D.C. On August 19, 2002, the

¹ At the time of claimant's transfer, Customs was located in the Department of the Treasury and was known as the United States Customs Service. On March 1, 2003, Customs became a bureau within the Department of Homeland Security.

agency's mobility counselor--Cendant Mobility (Cendant)--sent claimant a request to submit a binding decision form reflecting claimant's choice between the actual reimbursement method or the fixed amount reimbursement method² of TQSE. Cendant listed amounts to be expected under each reimbursement method: up to \$4462 for the actual expense method and \$4410 for the fixed amount method. The figure \$4410 was derived by multiplying the then-daily locality rate for Washington, D.C. of \$196 times 75% times thirty days. Cendant advised claimant that once claimant made her election, it was irrevocable.

A brochure entitled Relocating the Customs Way advised claimant that the fixed amount payment would be seventy-five percent of the per diem rate for the transferred-to locality times the number of days authorized, up to thirty days. The brochure also advised that:

if the expenses are less than the lump sum amount, you are not required to refund any remaining funds. However, if you incur expenses greater than the lump sum amount, you are precluded from requesting any additional funds or switching over to the Actual Expense Method of reimbursement.

On August 26, 2002, claimant chose the fixed amount method of TQSE reimbursement on the agency's binding decision form. On September 3, claimant submitted a memorandum to the agency's group leader travel team of the Accounting Services Division. Through that memorandum, claimant elected to receive the fixed amount payment of TQSE. Claimant also stated her understanding that election of the fixed amount was irrevocable and that the fixed amount payment for TQSE would be \$4410.

On September 4, 2002, the agency issued claimant an employee relocation expense authorization authorizing the fixed amount method of TQSE and a reimbursement of \$4410 for TQSE.

Claimant reported for duty in Washington, D.C., on or about November 6, 2002. On April 2, 2003, claimant submitted her TQSE voucher for \$4410. The agency determined that claimant had spent only three days in temporary quarters and denied reimbursement for the \$4410. Instead, the agency determined that claimant was only entitled to reimbursement for claimant's alleged three-day occupancy in temporary quarters.

Agency policy at time of claimant's move

Claimant discussed the agency's position on claimant's reimbursement entitlement with an agency official who was an approving authority for claimant's employee relocation expense authorization. According to claimant, this official told claimant that until December 18, 2002, it was agency policy to reimburse transferred employees the total fixed amount for thirty days of temporary quarters when they elected the fixed amount method of TQSE reimbursement, regardless of the number of days spent in temporary quarters.

² The term "fixed amount" is used in the FTR to describe this method of reimbursement. Many of the agency documents use the alternative term "lump sum" in place of the term "fixed amount." In writing this opinion and summarizing documents we use the FTR's term; when quoting documents we use the agency's term.

In its submission to the Board, the agency states that:

[Claimant] may be correct in her statement that employees who relocated before and after her received the [thirty] days of TQSE under the lump sum payment method. Customs does not require employees to provide receipts to verify the number of days actually spent in temporary quarters or the expenses incurred. That would be contrary to the purpose of the lump sum election.

In its submission to the Board, the agency also states that it offered claimant "up to" thirty days TQSE because it was "unsure how much TQSE she would occupy."

The agency admits that the forms and guidance it provided to claimant and other employees were confusing and that in February 2003, the agency revised its forms and instructions to make it clear that the agency would pay employees only for days actually spent in temporary quarters, regardless of the reimbursement method selected.

Discussion

Statute provides in pertinent part:

Under regulations prescribed under section 5738, an agency may pay to or on behalf of an employee who transfers in the interest of the Government--

....

an amount for subsistence expenses, that may not exceed a maximum amount determined by the Administrator of General Services, instead of the actual subsistence expense authorized in subparagraph (A) of this paragraph.

5 U.S.C. § 5724a(c)(1)(B) (2000).

Pursuant to the above statutory authority, the FTR in effect at the time claimant reported for duty, and in effect today, provides in pertinent part in its question and answer format:

What am I paid under the fixed amount reimbursement method?

If your agency offers and you select the fixed amount TQSE reimbursement method, you are paid a fixed amount for up to 30 days. No extensions are allowed under the fixed amount method.

41 CFR 302-6.200 (2002). The FTR explains that the amount of payment is determined for the transferred employee by taking the number of days the agency authorizes TQSE and multiplying that number of days by .75 of the maximum per diem rate prescribed in chapter 301 of the FTR for the locality of the new official station. Id. 302-6.201.

Additionally, and significantly, the FTR provides:

May I retain any balance left over from my TQSE reimbursement if my fixed amount is more than adequate?

Yes, if your fixed TQSE amount is more than adequate to cover your TQSE expenses any balance belongs to you.

41 CFR 302-6.203. This provision was added by FTR Amendment 98 and was effective February 19, 2002. See 66 Fed. Reg. 58,194 (Nov. 21, 2001). GSA explained in the Federal Register that the purpose of the amendment, as it pertained to TQSE, was to redesignate allowances as part 302-6 and to "[add] a new question 302-6.203 which clarifies that any balance, after expenses incurred under fixed amount reimbursement belongs to the employee." Id.

The FTR explains that use of the fixed amount TQSE reimbursement method eases administration of relocation claims because, in contrast to the actual expense method, under the fixed amount method no review of expense amount is required. 41 CFR 302-6.204(a).

It is clear that, at the time of claimant's transfer, the agency's policy was to grant thirty days of fixed amount TQSE reimbursement to those transferred employees who opted for reimbursement under the fixed amount method. The existence of this policy is confirmed by the agency's certifying officer for claimant's employee relocation expense authorization and by agency documents, i.e., the binding decision request form and the agency relocation expense authorization. Those documents essentially promised claimant reimbursement of \$4410 if she chose the fixed amount option.

The agency's actions--well after claimant's transfer--of reducing claimant's TQSE fixed amount reimbursement violated 41 CFR 302-6.203, which entitles employees to retain the balance of their fixed amount TQSE reimbursement if their reimbursement is more than adequate.

The agency relies on two Board decisions in support of its position that it may make an after-the-fact reduction in claimant's fixed amount reimbursement. Both of these decisions are inapposite.

The first decision upon which the agency relies is Richard J. Anderson, GSBCA 15870-RELO, 03-1 BCA ¶ 32,149. In that case, the agency had not, at the time of the employee's transfer, adopted any policy for implementation of the fixed amount TQSE method, and had not, as required by the FTR, given the employee a choice of the actual expense or fixed amount method for TQSE reimbursement. We concluded that the agency was required to afford the employee the choice retroactively, i.e., after the employee had completed his relocation. Then, the agency knew the length of time the employee had spent in temporary quarters. We concluded that given the retroactive nature of the reimbursement offer, the agency could not rationally offer the claimant thirty days fixed amount TQSE reimbursement knowing after the fact the number of days claimant had stayed in temporary quarters. Anderson, 03-1 BCA at 158,949.

Anderson involves unusual, and perhaps unique, facts. This case is different. Here, before claimant's transfer, the agency's policy was to reimburse employees for thirty days of TQSE when the employees chose the fixed amount method. The agency offered claimant reimbursement under that policy. The agency further admits that it did not know how many days claimant would spend in temporary quarters. Therefore, claimant's selection of the fixed amount TQSE reimbursement method relieved the agency of the administrative burden of evaluating the reasonableness of claimant's TQSE or of the length of time claimant stayed in temporary quarters.

The second case upon which the agency relies is Jeffrey J. Scussel, GSBCA 15696-RELO, 02-1 BCA ¶ 31,783. That decision construed the 2001 version of the FTR; in fact, the Board issued its decision five days before the effective date of the revised version of the FTR, which added the provision codified at 41 CFR 302-6.203. Scussel is simply not applicable because it construed an earlier and obsolete version of the FTR that does not govern claimant's TQSE reimbursement. The 2002 version of the FTR, which we have discussed above, governs claimant's entitlement because that version was in effect when she reported to her new duty station. 41 CFR 302-2.3.

For the reasons above, the Board grants the claim. Claimant is entitled to a total payment of \$4410 for TQSE reimbursement. The agency must pay claimant the difference between \$4410 and any amount claimant has already been reimbursed for three days of TQSE.

ANTHONY S. BORWICK
Board Judge