Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

August 10, 2004

GSBCA 16369-RELO

In the Matter of SAMUEL C. STRINGER

Samuel C. Stringer, FPO Area Europe, Claimant.

Laithe Haik, Human Resources Office, Department of the Navy, Rota, Spain, appearing for Department of the Navy.

NEILL, Board Judge.

Claimant, Mr. Samuel Stringer, is a civilian employee of the Department of the Navy. He asks that we review the Navy's calculation of the temporary quarters subsistence allowance (TQSA) to which he is entitled on the occasion of his transfer to the United States Naval Station in Rota, Spain. For the reasons set out below, we find the agency has acted properly in this matter and deny Mr. Stringer's claim.

Background

In September 2003, Mr. Stringer and his family undertook a permanent change of station (PCS) move from the United States to Rota. His travel authorization provided for ninety days of TQSA. On arrival at his new post of duty, Mr. Stringer conferred with the base Human Resources Office (HRO). There, he was provided with a printed statement of his various overseas allowances. The maximum allowable daily TQSA for himself and his three family members (spouse, one twelve-year-old child, and one child below the age of twelve) for the first thirty-day period was $449.35. The daily TQSA for the second and third thirty-day periods were $397.10 and $344.85 respectively.

For his first thirty-day period, Mr. Stringer applied for and was paid an advance of $13,480.50 based upon the daily allowable maximum of $449.35. At the end of this period, he submitted receipts for his lodging and a TQSA worksheet (standard form 1190) showing what purported to be his family's actual per day lodging expenses and meals and incidental expenses (M&IE). The total claimed for each day amounted to the allowable maximum of $449.35.

For his second thirty-day period, Mr. Stringer applied for and was paid an advance of $11,913 based upon the daily allowable maximum of $397.10. At the end of this second period, he again submitted receipts for his lodging and a TQSA worksheet showing his

family's purported actual per day lodging expenses and M&IE. As with his first voucher, the total of actual expenses claimed for each day amounted to the daily allowable maximum.

The agency declined Mr. Stringer's request for an advance for the third period of authorized TQSA. Instead, he was told that he would be reimbursed for the expenses of this third period upon presentation of a claim for expenses actually incurred. At the conclusion of this third period he submitted a voucher for his lodging and M&IE expenses. As before, the actual expenses claimed for each day amounted to the daily allowable maximum for the period.

This third voucher, however, was never paid. Instead, the Navy notified Mr. Stringer that his TQSA had been overpaid and that he was indebted to the Navy in the amount of $2477.15. In determining the amount of TQSA to be paid to Mr. Stringer, the Navy relied upon provisions relating to TQSA as found in the Department of State Standardized Regulations (DSSR). Mr. Stringer objects to the manner in which the agency has calculated his allowable TQSA and asks that we review his claim.

Discussion

The allowance in dispute here is that to which Mr. Stringer is entitled on the occasion of his arriving at his new post of duty at Rota. An agency may pay employees TQSA upon their arrival at or departure from an overseas post. The allowance is based on provisions of the Overseas Differentials and Allowances Act, which is codified in chapter 59 of title 5 of the United States Code. As we have previously noted, the purpose of that act is to improve and strengthen overseas activities of the Government by establishing a uniform system for compensating all government employees stationed overseas, regardless of the agency by which they are employed. The authority to promulgate regulations implementing this Act is delegated to the Secretary of State. Mary M. Kay, GSBCA 15816-RELO, 03-1 BCA ¶ 32,061. These regulations are found in the DSSR. The Joint Travel Regulations (JTR) of the Department of Defense (DOD), to which Mr. Stringer is subject as a civilian employee of DOD, expressly state that TQSA rules for employees occupying temporary quarters after first arrival at the permanent duty station in a foreign area or immediately preceeding final departure are found in section 120 of the DSSR. JTR C1003.

This Board considers claims relating to TQSA to be within its authority under 31 U.S.C. § 3702(a)(3) (2000) to settle claims "involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station." Frederic S. Newman, Jr., GSBCA 15873-TRAV, 02-2 BCA ¶ 31,993; Michael J. Krell, GSBCA 13710-RELO, 98-2 BCA ¶ 30,050; Susan Drach, GSBCA 13863-RELO, 98-1 BCA ¶ 29,442 (1997). In resolving those claims, we look to the provisions of the DSSR, which have the force and effect of law. We do not have, however, the authority to waive, or carve out any exception to, the application of these regulations. Gordon D. Giffin, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100.

Mr. Stringer's first criticism of the Navy's processing of his TQSA vouchers is that the HRO's calculations are based upon maximum travel per diem allowances for foreign areas, as set out in section 925 of the DSSR. After reading the introductory portion of this

section of the DSSR, Mr. Stringer is of the opinion that the per diem rates provided there are intended for use in determining per diem for those traveling on temporary duty (TDY), not for those traveling for a PCS.

Mr. Stringer is correct that section 925 refers to employees traveling on TDY. Nevertheless, the provisions of the DSSR in section 120, which deal with TQSA, refer the reader to the rates found in section 925 for purposes of calculating the maximum allowable TQSA. See DSSR 123.3. The Navy, therefore, is correct in turning to section 925, as expressly directed by the DSSR, for the per diem rate to use in calculating the maximum allowable daily TQSA for employees stationed overseas.

We note in passing that, although the DSSR regulations regarding TQSA refer to section 925 for purposes of calculating the maximum allowable daily TQSA, the per diem rates provided in section 925 do not translate directly to daily TQSA rates. Rather, they serve as the basis for calculating the TQSA in accordance with allowable percentages set out in the DSSR. Pursuant to these provisions, the employee and his or her dependents are entitled, for varying periods of time, to a specific percentage of the total per diem rate appearing in section 925 (i.e., for lodging and M&IE). The maximum allowable TQSA for each day, therefore, represents the total of these allowable percentages of the rates found in section 925 for the area in question.

The agency was obviously troubled by the fact that on the worksheets submitted by Mr. Stringer for the first and second thirty-day periods, he consistently claimed the maximum allowable for each day. This is not an unusual reaction on the agency's part. We have had occasion to observe similar reactions on the part of agencies reviewing claims for temporary quarters subsistence expenses (TQSE), a similar benefit for civilian employees relocating within the United States. In the absence of a reasonable explanation for such an unusual coincidence, claims for daily expenses or allowance which seek an amount *exactly* equal to the allowable maximum are generally viewed as lacking a credible basis. Donald Mixon, GSBCA 14957-RELO, 00-1 BCA ¶ 30,606; Michael D. Fox, GSBCA 13712-RELO, 97-2 BCA ¶ 29,217; Luther R. Dixon, GSBCA 13694-RELO, 97-1 BCA ¶ 28,947.

Mr. Stringer has offered several reasons why his claims for TQSA invariably sought the maximum amount allowable for each day. None of these explanations, however, enhance the credibility of his claims. He first states that he prepared the claims in this manner because he was told by the HRO to prepare his worksheet in this fashion. The explanation cuts two ways. If the alleged advice was to write on the worksheet an amount equal to the maximum allowable regardless of what his actual expenses were, then clearly these amounts lack a credible basis as claims for actual expenses. On the other hand, if the advice was to list actual expenses up to the maximum allowable amount, then we would expect the claims to vary, at least to some degree, rather than to invariably equal the exact amount of the allowable maximum for each of the sixty days.[1]

[1] We are not convinced that an HRO employee did, in fact, advise claimant to enter the maximum allowable regardless of what his actual expenses were. As proof that he was told by an HRO employee to enter the maximum allowable TQSA for each day, Mr. Stringer

In a further attempt to explain why his claim for daily TQSA consistently amounted to the maximum allowed, Mr. Stringer reminds us that the DSSR requires supporting receipts only for the employee's lodging. This is, of course, correct. Nevertheless, the absence of a requirement for supporting receipts for M&IE does not justify the use of nothing more than broad, generous estimates. It is unmistakably clear from the TQSA worksheet itself that only reimbursement of actual expenses should be sought. The sheet bears the title: "TQSA *Actual* Expense Worksheet" (emphasis added). At the foot of the sheet is the statement: "**REIMBURSEMENTS ARE LIMITED TO ACTUAL EXPENSES INCURRED UP TO THE MAXIMUMS."** Most importantly, a signed certification on the worksheet states: "I certify that the meal and laundry/dry cleaning expenses are accurate."

In the past, in dealing with claims for TQSA, we have allowed claims which were "accurate" even if not exact. Okyon Kim Ybarra, GSBCA 15407-RELO, 01-1 BCA ¶ 31,334. An "accurate" claim, however, is seldom one based solely on estimates. The express limitation of TQSA to actual expenses clearly imposes on an employee the onus of keeping track of actual expenses in a reasonably reliable manner, even if supporting receipts need not be submitted in support of a request for reimbursement. Otherwise, the certification required of the claimant is meaningless. Mr. Stringer has not provided for the record anything which would show how or even if he kept track of his actual M&IE for each day.

Mr. Stringer also defends the accuracy of his claims on the ground that there was an unfavorable exchange rate for the U.S. dollar at the time of his transfer and his family of four required at least three meals and snacks each day. We recognize that one explanation for why a claimant might consistently request the allowable maximum for each day of TQSA is that the employee's actual expenses for M&IE consistently exceeded the maximum. Mr. Stringer, however, does not expressly state this. Instead, he simply affirms that the numbers used on the worksheet are accurate and are not unreasonable. Thus the agency is left once more without a reasonable explanation of why the claims for each day repeatedly request the maximum allowable TQSA. We fail to see how this unusual circumstance is explained simply by reference to an unfavorable exchange rate or to the size of the claimant's family.

Relying upon our decision in Ybarra, Mr. Stringer argues that the agency cannot reject as unreasonable any claim that falls within the maximum reimbursement levels for TQSA as determined under the DSSR. This is an exaggeration of our holding in Ybarra. We held there only that maximum reimbursement levels can be a fair guide to the reasonableness of an employee's claim. In commenting on Mr. Stringer's claim, the agency states that the amounts claimed for meals and incidentals for the first sixty days of TQSA are excessive in the Rota area for a family of his size. The agency has provided no evidence

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refers us to a handwritten entry on one of the worksheets he submitted. He states that this entry was made by the employee who assisted him in preparing the worksheet and that it shows an intent to claim the maximum allowable TQSA for the day in question. The entry referred to, however, does not lead to the calculation of a sum equal to the maximum allowable TQSA for that day.

in support of this statement. Were the reasonableness of Mr. Stringer's claim the only issue here, we would not hesitate to apply the rule set out in Ybarra.

In this case, however, there is another and more fundamental issue. The agency, first and foremost, is concerned with the credibility of Mr. Stringer's claims. In Ybarra there was also an issue of credibility. We ultimately resolved it in favor of the claimant. Had it been otherwise, we would never have reached the issue of the claim's reasonableness. Here, instead, we agree with the agency that the explanations offered for why the maximum TQSA is always claimed are clearly inadequate.

In cases involving claims for TQSE, we have held that, where there is no credible basis for determining what the actual amounts are that should be paid, the agency is not required to approve any payment at all. Nevertheless, if an agency is inclined to provide some reimbursement under these circumstances, it may do so on the basis of statistical data it deems appropriate for the area. Mixon. Given the similarity in the two benefits, we find the rule applicable to claims for TQSA which are beset with the same deficiency.

Recognizing that Mr. Stringer obviously incurred subsistence expenses for the ninety days of authorized TQSA, the agency, in settling his claim, adopted what we view as a preeminently practical approach. The Navy first reimbursed the claimant for all actual lodging expenses for which receipts were provided. Next, it calculated a TQSA for M&IE only. To do this, it took from section 925 of the DSSR the applicable M&IE rate for Rota -- as opposed to the total lodging and M&IE rate for Rota which was previously used to determine the maximum allowable TQSA. Using this M&IE rate from section 925 and the allowable percentages provided in the DSSR for determining the maximum allowable TQSA for each day, the Navy calculated a maximum allowable daily TQSA for M&IE only.

Mr. Stringer objects to the agency making a calculation of TQSA based only on the M&IE rate for the area. He argues that under the DSSR the TQSA is calculated using the combined rates in section 925 for lodging and M&IE. He is, of course, correct in this regard. Nevertheless, he should not overlook the fact that the agency has chosen this approach in an effort to find some reasonable basis for reimbursing him notwithstanding the absence of a credible basis for his original claim.

We find no fault with the manner adopted by the agency to reimburse Mr. Stringer, given his inability to account for any actual subsistence expenses other than lodging. His claim for ninety days of the maximum allowable TQSA is denied.

EDWIN B. NEILL
Board Judge