

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 4, 2001

GSBCA 15487-TRAV

In the Matter of JOSE MARTINEZ

Jose Martinez, Brentwood, NY, Claimant.

J. Patrick O'Toole, Director, Division of Travel Management, Social Security Administration, Baltimore, MD, appearing for the Social Security Administration.

BORWICK, Board Judge.

Claimant, an employee of the Social Security Administration (SSA or agency), contests the agency's seeking a \$782 refund of lodging costs resulting from a long-term temporary duty (TDY) assignment. Claimant stayed in rented rooms for the last ten days of September and the first twenty days of October 2000. Claimant had been paid \$990 for the last ten days of September at a rental rate of \$99 per day, which was the highest lodging rate authorized on claimant's travel orders. The agency later questioned that payment. The landlady eventually charged claimant \$20.80 per day for the remainder of his TDY. The agency sought a refund of \$782, which was the difference between ten days' lodging at \$99 per day and ten days' lodging at \$20.80 per day. Claimant contests the refund. We sustain the decision of the agency, which was in accord with the Federal Travel Regulation (FTR).

The facts as indicated by the record are as follows. The agency authorized claimant to attend a training session in Portsmouth, New Hampshire, from July 17 through October 20, 2000. Due to a lack of suitable lodging at the daily per diem daily rate of \$81 in the Portsmouth area, the agency authorized the employees attending the training session to incur costs for lodging and be reimbursed, at a daily rate of \$99.

With the exception of claimant, the employees at the training session stayed at a hotel within one mile of the training center. Claimant made other arrangements for part of his TDY. Claimant stayed in a rental unit the first two months and with a landlady in a private residence for the last ten days in September and the first twenty days in October. According to claimant, before he moved in with the landlady, he received approval to do so from an employee in the agency travel office. According to claimant, the travel office employee advised claimant that renting rooms in a private residence would be acceptable as long as the claimant could provide receipts.

Claimant says he offered to pay the landlady the same rate he would have paid for a commercial establishment, and paid the landlady \$990 for the last ten days of September. Claimant did not produce a lease memorializing that arrangement. On October 3, 2000, claimant submitted a travel voucher for his TDY for the month of September and claimed reimbursement for lodging for the last ten days of September at the \$99 per day rate. The agency processed and paid that voucher.

On November 3, claimant submitted his voucher for his October TDY, claiming lodging at a rate of \$60 per day. Attached to the voucher was a note from the landlady that she had rented claimant two bedrooms and an upstairs bath in her residence. Again, no lease memorialized that arrangement.

The agency examined the voucher for the October TDY and advised claimant that his claimed rate was not acceptable for non-conventional lodging. The agency asked for additional information about the rental, including what facilities in the house were rented, what additional expenses were incurred solely due to claimant's presence in the household, whether there were receipts for the lodging, and a clarification as to whether the facilities had been rented in the past. The agency also conducted a post-payment audit for claimant's September voucher, in the course at which it discovered that claimant rented the same non-conventional lodging facility for a ten-day period in September.

In response to the agency's examination of the first voucher for the October TDY, the claimant submitted a second voucher, claiming lodging at a rate of \$20.80 per day. In this second voucher, claimant stated that he and the landlady had adjusted their agreement for October to conform to the travel regulations. The landlady explains that the \$20.80 per day rate was based on information from a realtor that the average rental rate for a "two-bedroom one bath place with a kitchen" was \$625 per month. That monthly amount divided by thirty days equaled the daily rate. The landlady described the arrangement with claimant as a business arrangement since she and claimant were not well acquainted. The landlady has since rented the premises to another tenant at the same rate. The agency approved reimbursement of lodging for claimant's October TDY at the \$20.80 per day rate.

The agency then sought a refund for a portion of the lodging reimbursement it had paid claimant for TDY for the last ten days of September. The agency used the \$20.80 per day rate it had approved for the October TDY and determined that the proper reimbursement for claimant's TDY for that period was \$208. The agency sought a refund of \$782, the difference between the \$990 it had paid claimant and \$208.

Claimant contests the agency's demand for the \$782 refund. Neither the claimant nor the agency disputes that claimant had entered into an arm's length business transaction with the landlady, and there is no argument that the landlady and claimant were friends or relatives. Consequently, the agency does not argue that claimant's lodging reimbursement amount is limited by the "friend(s) or relative(s)" provision of the FTR, 41 CFR 301-11.12(c) (2000). Therefore, we do not address whether that provision applies here. The only issue before us is the proper rate for the room rental during the last ten days of September 2000. Claimant states that the agency is not entitled to any refund because the agency travel official misled him.

The agency's actions in seeking a refund were in accord with the FTR and supplemental agency policy. The FTR provides that if, as here, an employee rents lodgings on a long term basis, the rental cost for a furnished dwelling may be considered part of the lodging cost. 41 CFR 301-11.15. The agency policy manual provides that expenses of subsistence obtained from a non-commercial source may not be considered for payment unless the expenses are reasonable in amount (much less than the equivalent cost in commercial facilities), necessarily incurred (an amount that the employee is required to pay), and a reflection of reimbursement by the employee for the reasonable additional costs incurred by another individual for providing lodgings and other subsistence. SSA Administrative Instructions Manual 07.19.02. The Government properly used the \$20.80 daily rate as the basis for reimbursement for claimant's lodging during the last ten days of September, since the \$20.80 per day figure was the eventual daily rate that claimant's landlady established as the reasonable rate for the rented rooms for both claimant and other patrons. There is no evidence in this record that a higher daily rate would be justified.

Claimant argues that he was misled by the travel office into thinking he could stay in the rented rooms at the \$99 daily rate authorized in the TDY orders. Claimant has not established that the travel office official authorized claimant to incur expenses at the \$99 daily rate. Even if it did, that fact would not assist claimant, since the Government is not bound by erroneous advice to pay monies in violation of statute or regulation. Office of Personnel Management v. Richmond, 496 U.S. 417, 425-26, 434 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Thomas W. Schmidt, GSBCA 14747-RELO, 00-1 BCA ¶ 30,757; 54 Comp. Gen. 747 (1975). The claim is denied.

ANTHONY S. BORWICK
Board Judge