

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

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May 27, 2003

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GSBCA 16024-TRAV

In the Matter of VIRGINIA B. HOTCHNER

Virginia B. Hotchner, United States Embassy London, FPO Area Europe, Claimant.

Chauncey R. Lynch, Chief, Payments Division, Department of State, Washington, D.C., appearing for Department of State.

**BORWICK**, Board Judge.

In this matter, claimant, a Foreign Service Officer with the Department of State (agency), challenges the agency's establishment of a debt for \$511. Claimant was paid for maid cleaning expenses for her rented house, incurred during her extended temporary duty (TDY) at the Foreign Service Institute (FSI) in the spring and early summer of 1998. Some years later, the agency sought a refund of the money it had paid her for that expense because the agency determined that she had not incurred the expense. Claimant's spouse, also an employee of the agency and also on TDY at the same time as claimant, incurred and was paid for lodging expenses on his travel voucher. Consequently, the agency determined that claimant was not entitled to be paid for the maid cleaning service.

We grant the claim in part. Claimant was entitled under the Foreign Affairs Manual (FAM), and under provisions of the Federal Travel Regulation (FTR) incorporated in the FAM, to a lodging per diem allowance for her TDY. Under those regulations then in effect, the reasonable expense of maid cleaning service, as well as other expense items, could be included in calculating claimant's lodging expense per diem allowance for long-term rental of a house. We return the matter to the agency for re-calculation of claimant's entitlement. In light of our disposition returning this matter to the agency, the issue raised by the agency of a \$.36 overpayment is moot.

Background

The facts are as follows. On March 9, 1998, the agency issued claimant, a new appointee, an appointment order for training at the FSI in Arlington, Virginia, between March 9 and July 23. The agency authorized claimant travel from Maryland Heights, Missouri, to Washington, D.C., and also authorized mileage for claimant's privately owned vehicle, employee per diem, employee family member per diem, shipment of unaccompanied

baggage, and temporary and permanent storage of HHG not to exceed eighteen thousand pounds. The order did not authorize reimbursement of actual subsistence expenses. The destination on the order was reflected as Washington, D.C., pending onward assignment to a permanent duty station overseas. Onward travel and shipment of effects other than items in storage was to be contained in a separate authorization to claimants overseas post.

The agency authorized claimant a per diem allowance to be reimbursed according to the following percentages of the per diem rate based upon duration of travel under the appointment order: one hundred percent for claimant's first thirty days of travel, fifty percent for days thirty-one to one hundred days of travel, and twenty-five percent for travel days beyond one hundred.

At all times relevant to the claim, claimant was (and is in fact now) married to an agency employee who was stationed in the Washington, D.C., area on a long-term TDY assignment. The couple lived in a residence in a Virginia suburb of Washington, D.C. Claimant states that "rent was incurred and it was paid under my husband's TDY benefits."

On or about April 10, 1998, claimant submitted a voucher for \$1312.07 for meals and incidental expenses (M&IE) between March 8 and April 6, which was the first twenty-nine days of claimant's TDY and a \$92.07 gas bill for lodging.<sup>1</sup> On or about June 25, claimant submitted a second voucher for M& IE and other expenses--telephone bill, power bill, gas bill, and cable television bill--for a second thirty days of TDY--the period April 6 through May 5-- totaling \$1487.57. This voucher included \$511 of expenses for a house cleaning service for seven weeks at \$73 per week. Claimant noted on the voucher: "No rent to be incurred, just [miscellaneous] lodging expenses." On or about July 23, claimant submitted a third voucher for M&IE for days 61 through 145 and other expenses--gas bill, utility and sanitation bills, phone bill, and \$584 of incurred house cleaning service expenses--totaling \$3495.09.

On or about December 15, the agency reported that it had "cleared", i.e., applied, all submitted expenses against claimant's travel advance of \$6200, and paid claimant "an extra \$95.09" over the travel advance. The agency also paid claimant \$.36 more than claimed on the vouchers.

On November 25, 2002, the agency advised claimant that she was indebted to the agency for \$511.36, presumably for the incurred expense of \$511 for the maid service on the second voucher and the \$.36 overpayment against the advance. Claimant notes that the agency did not seek refund of the \$584 for the house cleaning expenses stated in the third voucher.

### Discussion

As a Foreign Service officer, claimant's entitlements to travel and transportation benefits within the United States and abroad are generally governed by the FAM. 6 FAM

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<sup>1</sup> Claimant spent one day off-site for which she did not claim M&IE per diem.

111.2-1a. Claimant was a new appointee and, as a new appointee, received an appointment order to report for training at the FSI in Arlington, Virginia.

The version of the FAM in effect at the time of claimant's travel provided that an employee was entitled to travel and transportation from his or her residence to the official duty station. 6 FAM 125.2 (1997). Under the FAM, per diem was payable when an employee was away from his or her permanent duty station. 6 FAM 155.1. The FAM provided that maximum per diem rates for travel within the continental United States were those listed in the FTR at chapter 301, appendix A.

For the initial thirty days of TDY, an employee was entitled to be reimbursed the daily locality rate based on the lodgings-plus per diem system in the FTR. 6 FAM 153.3-2c(1). If no lodging cost was incurred, the employee's per diem would be reduced to the M&IE rate for the locality involved. 6 FAM 153.3-2c(2). For the thirty-first through the one hundred and twentieth day of TDY, employees were reimbursed at a daily locality rate not to exceed fifty percent of the lodging maximum and fifty percent of the M&IE per diem rate. 6 FAM 153-2c(3). For the one hundred and twenty-first day and beyond, the per diem percentage payment was reduced to twenty-five percent of the lodging and the M&IE rate. 6 FAM 153-2c(4)

The FAM adopted the provisions of FTR 301-7.14 in computing per diem claims in special situations such as a weekly or monthly rental of a residence. 6 FAM 154.2; see 41 CFR 301-7.14 (1997). The FTR provided that:

When an employee rents a . . . house . . . incident to a temporary duty assignment, the following expenses may be considered part of the lodging cost: the rental cost; . . . cost of connection, use and disconnection of utilities; cost of reasonable maid fee and cleaning charges; monthly telephone use fee (does not include installation and long-distance calls); and, if ordinarily included in the price of a hotel or motel room in the area concerned, the cost of special user fees, such as cable TV charges.

41 CFR 301-7.14(a)(1). The claimed daily lodging cost was to be computed by dividing the total lodging costs for the expenses listed in section 301-7.14(a)(1) by the number of days the house was actually occupied. The derived daily lodging costs, however, could not exceed the cost of renting conventional lodging at a daily rate. 41 CFR 301-7.14(a)(2). The allowable per diem was the daily lodging costs calculated under section 301-7.14(a)(2) plus the applicable M&IE rate, not to exceed the maximum per diem rate prescribed for the location involved. 41 CFR 301-7.14(a)(3)(I).

When claimant was at the FSI, she was away from her permanent duty station. Indeed, the appointment order contemplated the issuance of a subsequent travel authorization posting claimant to a permanent duty station overseas. Consequently, under the FAM and those portions of the FTR referenced in the FAM, lodging per diem was payable to claimant for the time away from her permanent duty station. The agency's appointment order confirmed that payment. We do not accept the agency's argument that claimant did not incur lodging costs because her husband paid the rent. Her voucher

establishes that she incurred expenses that are considered by applicable regulation as allowable components of lodging per diem for a long-term rental of a residence. Claimant does not claim the separate rental cost that her husband incurred.

In this case, claimant seeks payment of \$511 for her maid cleaning service which was incurred during the second thirty days of the TDY as part of lodging costs. As seen above, claimant is not entitled to reimbursement of the maid cleaning service per se. Rather, claimant is entitled under the FAM (and provisions of the FTR incorporated in the FAM) to a lodging per diem allowance whose daily rate would include those maid cleaning expenses as well as the utility and phone expenses (if normally included in the price of a hotel room in the Washington, D.C. area) she incurred as long as the daily lodging per diem allowance did not exceed the cost of renting conventional lodging at a daily rate. Additionally, reimbursement was limited to specified maximum amounts for each of the days claimant was on TDY.

Here the agency simply applied claimant's incurred lodging expenses listed in the voucher--save for the \$511 maid cleaning expenses in the second voucher--against claimant's advance. That payment did not comply with the FAM's standard method of reimbursement of lodging expenses based on a lodging per diem rate. The agency instead ended up reimbursing claimant for actual incurred lodging expenses. The FAM does allow actual subsistence expense reimbursement, but only under unusual circumstances and only when approved in advance in the travel authorization or in an amendment to the travel authorization. 6 FAM 156.1. The record before the Board does not show unusual circumstances, nor did the appointment order grant claimant reimbursement of actual subsistence expenses.

For each of the three vouchers, the agency must establish a lodging per diem payment that includes those expenses (including maid cleaning charges) allowed under 41 CFR 301-7.14(a)(1). The agency must then compute the claimed daily lodging per diem allowance in accordance with 41 CFR 301-7.14(a)(2), as explained above. In accordance with 41 CFR 301-7.14(a)(3)(I), after the agency has established the amount of the daily lodging per diem, it must then add that amount to claimant's M&IE rate, and the total daily payment may not exceed the maximum per diem rate for the location involved. Obviously, the agency must then total the allowed reimbursement and apply the amount allowed against claimant's advance. This matter is returned to the agency for calculation of claimant's lodging entitlement and per diem.

Our disposition of the per diem issue has rendered moot the issue of the return of the alleged \$.36 over-payment.

The Board grants the claim as described above.

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ANTHONY S. BORWICK  
Board Judge