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

January 31, 2001

GSBCA 15433-RELO

In the Matter of RAYMOND W. MARTIN

Raymond W. Martin, Chicago, IL, Claimant.

Thomas L. Brockman, Jr., Director, United States Army Corps of Engineers Finance Center, Millington, TN, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

Army Corps of Engineers employee Raymond W. Martin reported to a new permanent duty station in Chicago, Illinois, in January 2000. In transferring Mr. Martin to Chicago, the Corps authorized payment to him of temporary quarters subsistence expenses (TQSE) for a period of time while he was residing in temporary quarters. During his first month in the city, Mr. Martin stayed in a hotel which charged him $121.50 a day for lodging (including parking), and he ate his meals in restaurants. He asked to be reimbursed for all the expenses he incurred for lodging and meals. The Corps, however, limited reimbursement to $85 per day. Mr. Martin contests this determination.

The employee advances two reasons for payment of his full expenses. First, he maintains that he had an agreement with the human resources officer for the Chicago District that he would be paid for his hotel charges in the daily amount claimed. In this regard, he notes that the Department of Defense's (DoD's) Joint Travel Regulations (JTR) provide for negotiated agreements for transportation entitlements between a DoD component agency and an employee when an employee is transferred to a new duty station. JTR C4001 (June 1, 1997). Second, Mr. Martin contends that $85 per day is an inadequate amount to cover living expenses in Chicago. Here, he notes that the Federal Travel Regulation, issued by the Administrator of General Services, provided that federal employees traveling on temporary duty to Chicago in January 2000 could receive as much as $176 per day ($130 for lodging, $46 for meals and incidental expenses) to cover similar costs. 41 CFR ch. 301 app. A (2000).

The first justification advanced by Mr. Martin is not well taken. Although agencies have discretion to provide (or not provide) certain elements of relocation benefits, no agency official may ever agree to pay benefits which are forbidden by law. Pamela A. Mackenzie,

GSBCA 15328-RELO (Oct. 12, 2000); George S. Page, GSBCA 15114-RELO, 00-1 BCA ¶ 30,707 (1999).

The second justification also fails as a matter of law. The statute which authorizes payment of TQSE restricts payments to whatever is provided "[u]nder regulations prescribed" by the Administrator of General Services. 5 U.S.C. § 5724a(c)(1) (Supp. IV 1998) (referencing id. § 5738). Those regulations provide that the "applicable per diem rate" for actual TQSE expenses is, for temporary quarters located in the continental United States (CONUS), the standard CONUS rate. 41 CFR 301-5.102 (1999). The standard CONUS rate, when Mr. Martin reported to Chicago, was $85 per day. 41 CFR ch. 301 app. A (2000). Therefore, the Corps acted correctly in limiting reimbursement to $85 per day, though the employee spent considerably more for lodging and meals while living in temporary quarters.

We note that the regulations are consistent with the statute, which does not command that agencies reimburse transferred employees for every last dollar they spend on TQSE, or even for every dollar they reasonably spend on those expenses. From the time it initially authorized payment of TQSE, Congress has left to executive branch officials the writing of rules regarding the extent of reimbursement. The first law authorizing TQSE permitted daily reimbursement for transferred employees staying in temporary quarters to be set as high as daily rates of reimbursement for employees traveling on temporary duty. Congress made clear, however, that TQSE could be limited to lesser amounts. Pub. L. No. 89-516, § 2, 80 Stat. 323, 323 (1966); see also H. R. Rep. No. 89-1199, at 41 (1965); 112 Cong. Rec. 6591 (1966) (remarks of Rep. Rosenthal, floor manager of bill). The law has not varied from this rule in any of its amended forms enacted since that time. Pub. L. No. 105-264, § 7, 112 Stat. 2350, 2357 (1998); Pub. L. No. 104-201, § 1712, 110 Stat. 2422, 2753 (1996); Pub. L. No. 99-234, § 105, 99 Stat. 1756, 1758 (1986); Pub. L. No. 98-151, § 118, 97 Stat. 964, 977-78 (1983). Thus, the statute remains faithful to the intent of the drafters of the Act that first authorized TQSE: it "seeks to save [transferred] employees from some of the financial losses that are frequently inevitable when . . . moves are required." See H. R. Rep. No. 89-1199, at 2 (emphasis added).

We note also that Mr. Martin is of course correct in pointing out that the maximum daily reimbursement for transferred employees staying in temporary quarters in Chicago is less than half the maximum daily reimbursement for traveling employees staying in Chicago while on temporary duty. The disparity is not unique to a single city; it applies to all high-cost areas. The Administrator of General Services may wish to consider whether the regulation should be revised to diminish the disparity.

STEPHEN M. DANIELS
Board Judge