

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

April 9, 2001

GSBCA 15435-RELO

In the Matter of ALBERT CARTER, JR.

Albert Carter, Jr., Doraville, GA, Claimant.

James C. Brent, Assistant Agency Counsel, United States Army Corps of Engineers, Department of the Army, Europe District, APO Area Europe, appearing for Department of the Army.

DeGRAFF, Board Judge.

Albert Carter, Jr. asks us to review his agency's decision not to pay a temporary quarters subsistence allowance and not to reimburse him for the cost of immunizations and physical examinations needed by his dependents in order to obtain visas to enter the United States. Although DoD correctly concluded that Mr. Carter may not receive the allowance he claims, DoD might be able to reimburse Mr. Carter for his family's temporary quarters expenses. DoD should reimburse Mr. Carter for the cost of the immunizations that his dependents were required to receive in order to obtain their visas. DoD did not abuse its discretion when it decided not to reimburse Mr. Carter for the cost of his family's physical examinations.

Background

In early January 2000, Albert Carter, Jr. learned that his employer, the Department of Defense (DoD), intended to transfer him from Germany to Norcross, Georgia. Later that month, Mr. Carter and his fiancée were married. DoD issued travel orders to Mr. Carter on February 11, and amended those orders on February 25, to state that Mr. Carter would report to his new duty station on March 20. His wife and step-daughters wanted to delay their departure from Germany until after the end of the school year and Mr. Carter's travel orders approved delayed travel for his dependents.

Mr. Carter's February 11 travel orders provided that he was to receive a temporary quarters subsistence allowance (TQSA) "for not to exceed a 30-day period to departure [sic] from overseas duty station." Those orders also provided that Mr. Carter was not to be reimbursed for temporary quarters subsistence expenses (TQSE). DoD amended the travel

orders on February 25 to make it clear that Mr. Carter was to receive TQSA "for not to exceed a 30-day period prior to departure from overseas duty station." On March 23, DoD again amended the orders to add an authorization for reimbursable TQSE for sixty days.

Mr. Carter left Germany on March 18, in order to report to his new duty station in Georgia. Mr. Carter's dependents occupied temporary quarters in Germany from June 20 through July 19, when they left to join him in the United States. According to Mr. Carter, DoD told him that he could receive TQSA after his wife and step-daughters vacated their permanent apartment in Germany and before they traveled to Georgia.

Mr. Carter submitted a travel voucher dated July 28, to DoD's human resources office in Germany. In the voucher, Mr. Carter claimed 10,620 German marks (approximately \$5000) for temporary lodging and meals for his dependents in Germany from June 20 through July 19. Mr. Carter provided supporting documentation and he itemized his claimed costs on a form that is designed to be used to claim reimbursement for TQSE. The human resources office forwarded Mr. Carter's voucher to an accounting technician in the United States for review. The accounting technician told Mr. Carter that her office did not have the authority to process a request for TQSA and that he should submit his claim for his family's lodging and meals to the human resources office in Germany. The accounting technician also sent an electronic mail message to the human resources office in which she stated that Mr. Carter's submission included a form for TQSA that her office could not process. She asked what else was required in order for Mr. Carter to file a claim for TQSA. The human resources office responded that Mr. Carter could not receive TQSA for the lodging and meals he claimed, because that allowance terminated when he reported to his new duty station. After Mr. Carter received a copy of this exchange of electronic mail messages, he asked us to review DoD's decision regarding TQSA.

Mr. Carter's wife and step-daughters were required to have physical examinations and immunizations in order to obtain visas to enter the United States, and they did so in June and July. Mr. Carter paid for these medical services and in his July 28 travel voucher, he asked to be reimbursed \$600 for physical examinations and \$150 for immunizations.¹ DoD decided not to reimburse Mr. Carter for these costs and he asks us to review DoD's decision.

Discussion

DoD contends that we should dismiss Mr. Carter's claim for his family's lodging and meals expenses because he did not file a claim for TQSA with his agency and obtain an agency decision regarding that claim, as our Rule 401(c) requires him to do before proceeding here at the Board. 48 CFR 6104 (1999). DoD explains that Mr. Carter should have submitted his claim for TQSA on a form different from the one he used, which was a form used to itemize expenses when making a claim for reimbursement of TQSE. Because Mr. Carter never submitted what the agency calls an "identifiable" claim for TQSA, it says

¹ Mr. Carter submitted a receipt to DoD for 600 German marks, which is slightly less than \$300, for the physical examinations, and three receipts for 298.50 German marks, which is approximately \$150, for the immunizations. Apparently, Mr. Carter forgot to convert the 600 German marks to United States dollars when he submitted his voucher.

that it never had the opportunity to review Mr. Carter's documentation or to decide a claim for TQSA. Therefore, DoD says, we should dismiss the claim for TQSA. Mr. Carter says that his July 28 voucher contains his claim for TQSA.

Although Mr. Carter might not have submitted his claim for TQSA on the form that DoD wanted him to use, his July 28 voucher provided DoD with the information that it needed in order to review his claim. DoD had the opportunity to review Mr. Carter's claim for TQSA and his supporting information, and it determined that the claim should not be paid because the allowance terminated when he arrived in Georgia. Mr. Carter asked us to review DoD's determination after he received a copy of an electronic mail message confirming that DoD would not pay his claim. Nothing more is needed in order to satisfy the provisions of our rules, so we will proceed to examine the merits of Mr. Carter's claim.

The Overseas Differentials and Allowances Act says that when the Government does not provide free quarters for a civilian employee in a foreign area, the Government may grant the employee several types of quarters allowances. 5 U.S.C. § 5923 (1994). The Department of State Standardized Regulations (DSSR), which implement the statute, explain that one type of quarters allowance is TQSA. This allowance is meant to cover the reasonable lodging, meals, and laundry expenses of an employee and/or family members while occupying temporary quarters after arriving at a new overseas post and immediately preceding final departure from an overseas post. Employees may receive TQSA if they were recruited in the United States for duty in a foreign area. If they were recruited outside the United States, they may receive TQSA only if certain specified requirements are met. If TQSA is granted for a period immediately preceding final departure from an overseas post, and if the employee's family members depart the post after the employee, the allowance terminates when the employee arrives at the new post. DSSR 031.11, 031.12, 121, 122, 124.

DoD says that, for two reasons, Mr. Carter may not receive the TQSA that he claims. First, DoD says that Mr. Carter was not recruited in the United States for duty in a foreign area and does not meet the requirements that must be fulfilled in order for someone recruited outside the United States to receive TQSA. Mr. Carter has not refuted DoD's statements, so we accept them as true. Second, DoD says that even if Mr. Carter could receive TQSA, he was not entitled to TQSA after he reported to his new duty station in Georgia.

DoD correctly concluded that Mr. Carter may not receive the TQSA that he claims. As explained above, an employee who is recruited outside the United States for duty in a foreign area must meet certain specified requirements in order to receive TQSA. Apparently, Mr. Carter was recruited outside the United States for duty in Germany. Mr. Carter has not rebutted DoD's contention that he does not meet the requirements that must be fulfilled in order for an employee who was recruited outside the United States to receive TQSA. Even if Mr. Carter met the requirements for receiving an allowance, DoD could not pay his claim. The DSSR state that when TQSA is provided to an employee who is leaving an overseas post before his family departs, the allowance terminates when the employee arrives at his new post. According to this regulation, any allowance would have terminated when Mr. Carter arrived at his new post in March, several months before his dependents moved into their temporary quarters in June. It is certainly regrettable if Mr. Carter received faulty advice from a DoD employee, but such advice does not authorize an expenditure of public funds that is contrary to the regulations.

DoD might be able to reimburse Mr. Carter for his family's temporary quarters expenses as TQSE. From the information available to us, we cannot tell whether Mr. Carter ever made a claim for TQSE, whether DoD ever considered reimbursing Mr. Carter for his family's temporary quarters expenses as TQSE, or whether he would be eligible to receive reimbursement for those expenses as TQSE. If Mr. Carter lived in temporary quarters in Georgia from June 20 through July 19, while his family lived in temporary quarters in Germany, he might be able to be reimbursed for their quarters expenses as TQSE. 48 CFR 302-5.10, -5.109 (2000); Joint Travel Regulations (JTR) C13205-C (Dec. 1, 1999).² Whether Mr. Carter's quarters in Georgia were temporary depends upon his intent at the time he began occupying those quarters, regardless of whether the quarters eventually became his permanent quarters. 48 CFR 302-5.14; JTR C13205-B. As we said, we do not know whether Mr. Carter ever claimed TQSE and we cannot say for certain that he is eligible to be reimbursed for his family's temporary quarters expenses as TQSE. However, if Mr. Carter has not submitted a claim for TQSE to DoD, he may wish to do so.

Regarding his claim for medical expenses, Mr. Carter says that if DoD had issued identification cards to his dependents, they could have obtained physical examinations and immunizations at a DoD medical clinic. Because his family had no identification cards, Mr. Carter had to pay for their physical examinations and immunizations. According to Mr. Carter, DoD told him that it would not issue identification cards for his dependents because he would be departing Germany very shortly after receiving his travel orders. DoD says that even if Mr. Carter's dependents had been issued identification cards, they could not have used the cards after Mr. Carter left Germany. We cannot resolve a dispute regarding DoD's decision not to issue identification cards because such a dispute is beyond the scope of our authority. We can, however, look to see whether the expenses can be reimbursed pursuant to the rules that govern claims for relocation expenses. 48 CFR 6104.

DoD should reimburse Mr. Carter for the cost of the immunizations that his dependents were required to receive in order to obtain their visas. The Federal Travel Regulation (FTR), which applies to all civilian federal government employees, provides that the reimbursable travel expenses of the dependents of a transferred employee include "[c]harges for inoculations that cannot be obtained through a Federal dispensary." 41 CFR 301-12.1, 302-2.2(a) (2000). The JTR, which apply to civilian employees of DoD, list the fees and charges that are reimbursable travel expenses of dependents when an employee is transferred either to or from a permanent duty station overseas. The list includes "charges for inoculations which cannot be obtained through a Federal dispensary" JTR C7002-E (Dec. 1, 1999), C7003-G (Nov. 1, 1998). DoD does not dispute Mr. Carter's contention that he paid for immunizations for his dependents because he could not obtain those immunizations at a Government medical facility. According to the regulations, therefore, DoD should reimburse Mr. Carter for the cost of the immunizations.

Turning to Mr. Carter's claim for the cost of his family's physical examinations, we note that the regulations give DoD considerable discretion in deciding whether to reimburse an employee for expenses incurred by the employee's dependents in connection with a permanent change of duty station. The cost of a physical examination required in order to

² We refer to the version of the regulations that applies to Mr. Carter.

obtain a visa is not listed as a reimbursable expense in either the FTR or the JTR. 41 CFR 301-12.1; JTR C7002-E. The FTR, however, provides that agencies can reimburse employees for expenses other than those listed. Although the JTR do not say that expenses other than those it lists can be reimbursed, the less restrictive provision of the FTR supersedes the more limited provision of the JTR. C. Ray Taylor, GSBCA 13688-TRAV, 97-1 BCA ¶ 28,783. Thus, DoD may reimburse employees for expenses other than those listed in paragraph C7002-E of the JTR, if it exercises its discretion and decides to do so.

When evaluating Mr. Carter's claim for reimbursement of the costs of his family's physical examinations, DoD relied upon decisions issued by the General Accounting Office (GAO), which resolved relocation claims until mid-1996. GAO decided that, as a general rule, the Government could not pay for physical examinations of employees or their dependents because medical costs are not proper charges against appropriated funds. GAO recognized exceptions to this rule only if the medical services were primarily for the benefit of the Government. Payment for Expenses of Medical Examinations, B-253159 (Nov. 22, 1993); 53 Comp. Gen. 230 (1973); 41 Comp. Gen. 531 (1962); 22 Comp. Gen. 32 (1942). GAO determined that the costs of physical examinations of civilian employees and military members for the purpose of obtaining visas were not reimbursable transportation expenses because such examinations were primarily for the benefit of the employee or military member and not for the benefit of the Government. Because the costs of physical examinations of civilian employees and military members were not reimbursable, GAO ruled that such costs were also not reimbursable when they were incurred by dependents. R.P. Hogan, B-164218 (June 10, 1968); Lawrence B. Weier, B-157347 (Aug. 26, 1965); 44 Comp. Gen. 339 (1964).³

GAO's decisions were predicated upon its determination that the physical examinations at issue were primarily for the benefit of the employee and not the Government. We cannot say that DoD's decision to follow the GAO decisions was arbitrary or irrational, so we will not disturb that decision. If, however, DoD determines that the physical examinations at issue here were primarily for the benefit of the Government, it may reimburse Mr. Carter.

In summary, the claim is granted in part and denied in part. DoD correctly decided not to pay Mr. Carter's claim for TQSA, although it might be able to reimburse him for his family's temporary quarters expenses as TQSE. DoD should reimburse Mr. Carter for the

³ GAO decided that when military members changed permanent duty stations, DoD could reimburse the expenses of their dependents "on the basis of the same elements of cost as are authorized for the members themselves, as reimbursable transportation expenses [in the JTR]." 41 Comp. Gen. 712, 714 (1962). Because regulations authorized DoD to reimburse a transferred military member for taxi fares between terminals, tips, port taxes, travelers checks, passport fees, visa fees, and photographs and birth certificates needed to obtain passports and visas as reimbursable transportation expenses, GAO determined that these expenses were also reimbursable when they were incurred by dependents of a military member in connection with a change of permanent duty station. 51 Comp. Gen. 606 (1972); 46 Comp. Gen. 792 (1967); 44 Comp. Gen. 416 (1965); 41 Comp. Gen. 712.

cost of his family's immunizations, but is not required to reimburse him for the cost of the physical examinations.

MARTHA H. DeGRAFF
Board Judge