

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 5, 2001

GSBCA 15649-RELO

In the Matter of MICHAEL W. BURNS

Michael W. Burns, Atlanta, GA, Claimant.

Kim M. Meyer, Chief, Military Technician Program Division, Headquarters, Fort McCoy, Department of the Army, Fort McCoy, WI, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant, Michael W. Burns, is a civilian employee of the Department of the Army. His claim for reimbursement for the cost of temporary quarters subsistence expenses (TQSE) resulting from his permanent change of station (PCS) orders was denied by the agency, and he has requested that this Board review the agency's decision.

Background

In April 2000, claimant received PCS orders to transfer from his old duty station in Fort Dix, New Jersey, to Fort McPherson, Georgia. His travel orders authorized reimbursement of TQSE for sixty days. On May 27, 2000, claimant checked into a hotel in the vicinity of his new duty station. The following Monday, May 29, 2000, he found that the builder had encumbered the title of his home at his old duty station by attaching a lien for \$40,000. Claimant states that since he understood that the lien could impact his ability to sell the home on June 1, 2000, as he had previously planned, he checked out of the hotel and moved into a room for which he paid rent. He rented the room from June 1, 2000, until January 1, 2001. His first claim for reimbursement for TQSE only sought payment for the six days claimant spent at the hotel, for which he was reimbursed.

In June 2000 the proposed sale of claimant's home did not occur because of the lien on the title. Claimant retained an attorney to have the lien dismissed. In January 2001, the lien was dismissed. Claimant stayed in another hotel in the vicinity of his new duty station over the next five months while awaiting the progress on the sale of his home in Philadelphia. He did not request reimbursement for these costs. The record is not clear as to when claimant ultimately sold his home.

On March 26, 2001, while on leave, claimant contacted the individual designated as the point of contact for questions concerning his PCS and asked if he was entitled to use the

fifty-four days of temporary quarters that he had not claimed. Claimant states that on March 30, 2001, that person informed him that he was entitled to use the remaining fifty-four days of his TQSE allowance "based on a provision in the Joint Travel Regulation[s] (JTR) that states that a service member is allowed to break the rule for continuous use of temporary quarters if the break was due to no fault of their own."

Claimant subsequently submitted a second claim for reimbursement of TQSE for fifty-four days, from June 3 through July 26, 2001. The agency denied this claim, stating:

Your request for additional days of Temporary Quarters and Subsistence Expense (TQSE) is denied. TQSE must run consecutively from the first day you were in temporary quarters to include any additional TQSE periods requested and authorized unless a non-official interruption is authorized. It is not felt that your reasons qualify as an authorized interruption.

Claimant has responded to the agency's submissions in this case, noting that he was never informed that the TQSE must run consecutively. The only issue that was brought to his attention was the total number of days for which he could claim TQSE.

Discussion

When an employee makes a permanent change of duty station, his agency may reimburse the employee for TQSE for a period of not more than sixty consecutive days. 5 U.S.C. § 5724a(c)(1) (Supp. V. 1999); 41 CFR 302-5.104 (1999). The agency may extend the period by as much as sixty additional days. 5 U.S.C. § 5724a(c)(2); 41 CFR 302-5.104. The period of consecutive days may be interrupted only for time to travel between the old and new duty stations, for official necessity, or for non-official necessary reasons that were beyond the employee's control and acceptable to the agency, such as hospitalization. 41 CFR 302-5.106; JTR C13205-C.2.a (Apr. 2000).

Claimant first submitted a claim for reimbursement for six days of TQSE in May 2000, at the beginning of his TQSE period, which was granted by the agency. He later submitted a claim for an additional fifty-four days in June and July 2001, which was denied by the agency. That second period is the subject of this case. The days for which claimant asks to be reimbursed did not run consecutively with his authorized TQSE periods, and the gap was not created due to travel, official necessity, or any non-official necessary reason beyond claimant's control and acceptable to the Army. According to the applicable regulations, claimant is not entitled to be reimbursed TQSE for the non-consecutive days. While claimant may have initially received erroneous information from his agency that he could claim for non-consecutive days, it is well-settled that a Government official may not obligate the Government to spend money in violation of statute or regulation. E.g., Kevin S. Foster, GSBGA 13639-RELO, 97-1 BCA ¶ 28,688 (1996).

It is not clear from the record why claimant did not seek reimbursement for sixty consecutive days of TQSE from May 27, 2000. Based upon the facts set forth, it appears that he would be entitled to reimbursement of TQSE for this period. However, claimant did not submit a claim for these days.

Decision

The claim as submitted is denied.

ALLAN H. GOODMAN
Board Judge