

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

July 25, 2002

GSBCA 15682-RELO

In the Matter of MARK G. DERBY

Lisa F. Cook of Viken, Viken, Pechota, Leach & Dewell, LLP, Rapid City, SD, appearing for Claimant.

David M. England, Office of General Counsel, Defense Commissary Agency, Fort Lee, VA, appearing for Defense Commissary Agency.

WILLIAMS, Board Judge.

The agency properly denied reimbursement of temporary quarters subsistence expenses (TQSE) for meals where no credible evidence supported the amounts claimed for individual meals.

Background

Claimant, Mark G. Derby, a commissary officer employed by the Defense Commissary Agency (DeCA), was transferred from Fort Bliss, Texas, to Ellsworth Air Force Base (AFB) near Rapid City, South Dakota, with a reporting date at his new duty station of June 3, 2001. Mr. Derby was authorized relocation expenses including TQSE for sixty consecutive days for himself and his wife and twelve-year-old son.

In May 2001, claimant and his family traveled in their privately owned vehicle (POV) from Texas to Rapid City, South Dakota. They initially obtained temporary quarters at the Comfort Inn of Rapid City, which is approximately eight miles from Ellsworth AFB, for three days. This room had no cooking facilities.

Then Mr. Derby and his family obtained temporary quarters at a motel, the Pine Tree Inn, approximately one and one-half miles from the main gate of Ellsworth AFB. They remained there for the first TQSE period. This room had a refrigerator, a coffee pot, and a microwave, but no other cooking facilities. According to the desk clerk at the Pine Tree Inn, "a lot of the people who stay there eat at the NCO [non-commissioned officers] club on

base." Other than fast food restaurants, the nearest eating establishments are about eight miles away.

During the second TQSE period, Mr. Derby and his family were unable to locate suitable temporary quarters and moved into a vacant home on base that did not have any furniture.

Throughout both of these TQSE periods, Mr. Derby says that the family ate all of their three meals a day at commercial establishments.

On June 5, 2001, claimant submitted his voucher for TQSE for the period of May 27 through June 5, 2001, in the amount of \$1696.92. On July 5 he submitted a voucher for TQSE for the period of June 6 through July 5, 2001, in the amount of \$5958.53. On August 1 claimant submitted a voucher for TQSE for the period of July 6 through July 31, 2001, for \$3360.50.

Mr. Derby did not submit meal receipts because he understood that none were required for meal expenditures totaling less than \$75. However, he did submit three TQSE worksheets required by the agency itemizing each day's expenditures and indicating the date of the expenditure, for whom the expenditure was made, and the cost of lodging. These worksheets itemized daily cost of meals and noted that each meal was taken at a commercial establishment.

Because in the first TQSE period every breakfast cost between \$23.95 and \$51.98, every lunch between \$30.95 and \$69.98, and every dinner between \$64.85 and \$74.91, the agency suspected that these itemizations did not reflect the actual expenses claimant incurred. When asked by the agency what type of establishments he and his family patronized, claimant identified Outback Steak House, Red Lobster, and Denny's. Subsequently, Mr. Derby advised the Board that these were just a few of the places he and his family patronized, and that he could not remember all of them. He listed some thirteen other establishments in his submission to the Board. Mr. Derby stated that he did not eat at the NCO club during his TQSE period "because of past experiences with poor quality food" and that he ate there after his TQSE period and could attest to this. Because Mr. Derby had to be at work by 7:00 a.m., he said he could not eat at the McDonald's on base and instead he, his wife, and their twelve-year-old son went to the Flying J Truck Stop, four miles from the gate.

Because the agency doubted the veracity of the claimed meal expenses, an agency attorney conducted telephonic interviews "with any waitress who would answer the phone" at the three restaurants claimant initially said he patronized. According to a waitress at the nearest Red Lobster, the average lunch for an adult is \$10 and the average dinner is \$14-\$15. At the Outback Steakhouse, the most expensive item on the menu is \$24 and the average dinner is \$18 including drinks. The Outback is not open for lunch. Denny's is the only one of these three restaurants with a breakfast menu, but the most expensive item on that menu is \$9.20 and, according to the waitresses, it would not have been possible for a family of three to eat \$50 worth of breakfast food.

Viewing Mr. Derby's TQSE claims in total, he and his family allegedly consumed some \$6000 worth of meals in sixty-three days, all on a cash and carry basis because he had no canceled checks, receipts, or credit card bills to substantiate any of the claimed amounts.

In addition, the receipts he did provide for laundry and dry cleaning reflected the purchase of orange juice, milk, coffee, and foil at Sam's Club on June 27 and on June 29.

In light of the attorney's findings, the chief of the DeCA's Human Resources Operations (HRO) Directorate determined that Mr. Derby's claimed meal expenses were not actual expenses and were not substantiated. The chief of DeCA's HRO offered Mr. Derby the opportunity to provide substantiation, including automated teller machine (ATM) receipts or bank statements. Claimant provided ATM receipts indicating he withdrew \$3000 -- but the dates on some receipts were illegible.

Claimant submitted a receipt dated July 21, 2001, for dinner at Boston's Gourmet Pizza for \$50.88, to which claimant added a \$5 tip for a total of \$55.88,¹ a receipt dated June 3 (or 8), 2001, for \$68.19 from Red Lobster to which claimant added a \$10 tip for a total of \$78.19, a receipt dated June 11, 2001, from Outback Steakhouse for \$95.57 from which he deducted \$23.99 for a total of \$71.58, and added a \$10 tip for a total of \$81.58, and a receipt dated June 22, 2001, from Art's Southern Style Smoke House for \$76.23 to which claimant added a \$10 tip for a total of \$86.23.

However, none of the amounts entered in claimant's TQSE worksheets match the amounts on these receipts. On July 21, the cost of dinner claimant listed in the worksheet was \$48.80; on June 3, \$68.90; on June 8, \$74.91; on June 11, \$71.95; and on June 22, \$73.88.²

After evaluating the ATM and meal receipts, the chief of DeCA's HRO affirmed her prior determination because the ATM receipts indicated withdrawals of \$3000, less than half of the amount claimed for meals, and did not take into account the more than \$1000 he paid for lodging. In addition, she concluded that claimant's claimed meal expenses were not actually incurred or substantiated, since the amounts on the few receipts provided did not match any amounts claimed during the TQSE period.

Discussion

The pertinent portion of the Joint Travel Regulations (JTR) provides that reimbursement for TQSE is limited to actual expenses incurred, up to the maximum authorized or approved, provided that the expenses are directly related to temporary quarters occupancy, are reasonable in amount, and are substantiated. JTR C13215-A.3.a-c. A supporting statement must include the cost of each meal, for each day, by date, and where and by whom consumed.

Construing the similar provision of the Federal Travel Regulation (FTR), in Paul W. Johnson, GSBCA 13815-RELO, 98-1 BCA ¶ 29,407 (1997), we sustained the agency's denial of the claimant's supplemental voucher for TQSE. We noted that the FTR requires that if the

¹All of the tips and new totals were entered in claimant's handwriting.

²Claimant also submitted a receipt from Applebee's for \$25.65 plus a \$5 tip, but the date was illegible.

expense claimed had not been actually incurred, then the agency cannot reimburse the claimant. We concluded that the FTR requires "contemporaneous itemization of expenses when one has been authorized TQSE." Id. at 146,110. As we recognized in Walter Jones, GSBCA 15200-RELO, 00-1 BCA ¶ 30,882, the JTR permits reimbursement only of expenses actually incurred and requires, at the least, a written supporting statement containing the required elements, and the requirement for a supporting statement is to reflect contemporaneous (with the incurrence of the expenses) itemization of expenses. In Walter Jones we denied reimbursement for expenses and held that the agency was properly skeptical where there was a discrepancy in the amounts claimed for meals in the original and amended vouchers. In this case, the agency similarly had valid reasons to question the veracity of the claimed meal expenses, especially in light of the fact that none of the four receipts provided were consistent with the amounts claimed on the worksheet.

As we recognized in Donald Mixon, GSBCA 14957-RELO, 00-1 BCA ¶ 30,606, even where some amounts must have been spent for meals, we deny reimbursement where there is no credible basis upon which the agency can determine what those amounts actually were. Absent evidence of this nature, the agency is not required to approve any payment at all. Mixon; Luther R. Dixon, GSBCA 13694-RELO, 97-1 BCA ¶ 28,947; accord Adil F. Khan, GSBCA 15756-RELO (July 9, 2002) (claimant is not entitled to any reimbursement for the claimed meal expenses where he has not substantiated that the claimed costs were his actual expenses); Michael D. Fox, GSBCA 13712-RELO, 97-2 BCA ¶ 29,217; Michael L. Morgan, GSBCA 13646-RELO, 97-2 BCA ¶ 29,021. Here, where the record indicates that the amounts claimed were inaccurate on four occasions and no documentary evidence supports any other entries in claimant's worksheet, the agency properly denied any recovery for meals during the TQSE periods.

Decision

The claim is denied.

MARY ELLEN COSTER WILLIAMS
Board Judge