

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

April 30, 2002

GSBCA 15770-RELO

In the Matter of SAMUEL E. JONES

Samuel E. Jones, Jacksonville, FL, Claimant.

Eliot Van Velzen, Chief, Travel Section, National Finance Center, United States Customs Service, Indianapolis, IN, appearing for Department of the Treasury.

BORWICK, Board Judge.

The Department of the Treasury requests a decision under 31 U.S.C. § 3529 (Supp. V 1999) in the matter of Samuel E. Jones, claimant. The agency wants to know if it may authorize a period of temporary quarters subsistence expenses (TQSE) longer than the thirty-day period it had granted under the fixed amount method of reimbursement. The agency may not retroactively change the travel authorization from the fixed amount method to the actual expense method, and the agency may not authorize a TQSE period greater than the thirty days it had authorized under the fixed amount method. Our answer to this question also disposes of a second question the agency had posed.

The following is indicated by the record. The agency authorized claimant a permanent change of station (PCS) in the interest of the Government from McAllen, Texas, to Glynco, Georgia. The agency gave claimant the option of selecting the fixed amount (lump sum) or actual expense method of reimbursement for incurred TQSE. On April 19, 2001, claimant chose the fixed amount method, and on an agency form recording his choice of options, acknowledged that "I understand that this election is absolutely irrevocable." The agency states that claimant's selection of the fixed amount method was based on a relocation services counselor's erroneous advice that the fixed amount reimbursement would be based on the per diem rate of \$109 for Savannah, Georgia, instead of the correct rate of \$85--the standard continental United States (CONUS) rate--applicable to Glynco, Georgia. Glynco is about seventy miles from Savannah. The agency states that based upon the Savannah, Georgia rate, claimant expected to receive \$2452.50 in TQSE reimbursement. On May 7, 2001, the agency issued a travel authorization granting fixed amount TQSE for thirty days and a payment of \$2452.50.

On June 24, 2001, claimant arrived at his duty station. He stayed in temporary quarters from that date until September 9, 2001, the day he closed on his permanent

residence. Claimant sought reimbursement of the \$2452.50 for TQSE as stated in his travel authorization. Upon review of the request, the agency realized that it had used the wrong per diem rate and paid claimant \$1912.50, which was the fixed amount reimbursement based on the standard per diem rate of \$85.

On September 26, 2001, claimant asked the agency to change his travel authorization from the fixed amount method of reimbursement to the actual expense method of reimbursement and sought permission to request reimbursement for seventy-eight days of TQSE. The agency approved the request and is prepared to reimburse claimant an additional amount for lodging.

The agency states that it granted the relief claimant had requested--retroactive amendment of his travel authorization--relying on the case of Bryan P. Byrnes, GSBCA 14195-TRAV, et al., 98-1 BCA ¶ 29,535. The agency requests the Board's opinion on the following:

Is it permissible under the terms of the Federal Travel Regulation to expand the [thirty-day] basis for the calculation of a lump sum amount to a longer period under the actual expense method? In this case [seventy-eight] days was authorized under the actual expense method. Typically, [sixty-day] TQSE allowance is authorized under the actual expense method.

In the event that a retroactive travel authorization was appropriate for [seventy-eight] days of TQSE on an actual basis, is it permissible to pay for rent beyond the [seventy-eight] days as claimed by Mr. Jones?

The answer to the agency's first question is no. The agency could not expand the thirty-day basis for the calculation of a lump sum amount to a longer period under the actual expense method because it could not retroactively change the method of TQSE reimbursement from fixed amount to actual expense after claimant had commenced his TQSE period.

Under the Federal Travel Regulation (FTR), if an agency offers the fixed amount method of TQSE reimbursement, and the employee selects that method, the agency must provide it to the employee. 41 CFR 302-5.11, -5.304(c) (2000). If the employee selects the fixed amount method, the agency pays for up to thirty days of TQSE, and no extensions beyond the thirty days are available. 41 CFR 302-5.200; Jeffrey J. Scussel, GSBCA 15696-RELO (Feb. 14, 2002). An employee is not entitled to additional reimbursement if the payment under the fixed amount method is insufficient to cover an employee's TQSE costs. 41 CFR 302-5.202. Reading these provisions together, we conclude that once an employee chooses the fixed amount method of reimbursement offered by the agency, the agency must respect the employee's choice. The employee must live with the consequences of his or her choice, since no extensions beyond the maximum period are available, and no additional reimbursement is allowed. In this case, the agency's advice to the employee that selection of the fixed amount method was irrevocable was in accord with the FTR.

Under the fixed amount method, an employee's reimbursement is calculated by multiplying the number of days authorized by .75 of the maximum per diem rate prescribed

by the FTR "for the locality of the new official duty station." 41 CFR 302-5.201. (For each family member, the employee is also entitled to reimbursement of the same number of days by .25 of the maximum per diem rate). Id. Here, thirty days of TQSE were authorized and the maximum per diem rate for the locality of the new official duty station, Glynco, was the standard continental United States rate of \$85. 41 CFR ch. 301 app. A. The total amount to which claimant is entitled is thirty times .75 times \$85 or \$1912.50.

The agency's reliance upon Byrnes as authority to change the TQSE method of reimbursement from the fixed amount method to the actual expense method is misplaced. In Byrnes, we concluded that the agency could retroactively amend its travel authorization to correct an administrative error to reflect its actual intent: to authorize a regulatory mandated period of temporary duty of 180 days, not 181 days as stated in the orders. 98-1 BCA at 146,426. Similarly, in this case, Byrnes is authority for the agency to correct claimant's travel authorization to reflect the proper reimbursement under the fixed amount method to which claimant is entitled--\$1912.50 instead of \$2452.50.

However, the agency may not alter travel orders to authorize an expense that is not permitted by statute and regulation or increase claimant's entitlements fixed by statute or regulation. Lee A. Gardner, GSBCA 15404-RELO, 01-2 BCA ¶ 31,456. When claimant elected the fixed amount method and began his TQSE period, his entitlement to TQSE reimbursement was fixed and limited by that method. Therefore, the agency may not, after completion of the TQSE period, alter claimant's travel orders to authorize reimbursement on the basis of the actual expense method instead of the fixed amount method. While it is unfortunate that claimant was provided erroneous advice by the agency's relocation counselor, such erroneous advice cannot serve to expand claimant's entitlement. Gardner. It was claimant's responsibility to obtain accurate information about the per diem rate so he could make an informed choice of which TQSE method to use.

ANTHONY S. BORWICK
Board Judge