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

May 20, 2002

GSBCA 15818-RELO

In the Matter of CHRISTINE GRIFFIN

Christine Griffin, Fort Monmouth, NJ, Claimant.

Deidre W. Gray, Chief, PCS & Appeals Division, Columbus Center, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

This case involves a claim for temporary quarters subsistence expenses (TQSE) by Christine Griffin, an employee of the Defense Logistics Supply Center at Fort Monmouth, New Jersey. The Defense Logistics Agency (DLA) transferred Ms. Griffin to this duty station in May 2000. She was authorized TQSE for 120 days after arriving there and actually lived in a hotel for ninety-seven days before moving to a permanent residence. The Defense Finance and Accounting Service (DFAS) believes that the claim she submitted is false and has refused to pay any of it, relying on its own interpretation of the "tainted day rule." DFAS's interpretation is patently at odds with the Board's explanation of the rule and is not good ground for rejecting the claim. We direct DFAS to pay the claim, as currently stated, to the extent permitted by regulation.

Background

Ms. Griffin moved to New Jersey, at the direction of DLA, on May 20, 2000. She and her son moved into a hotel, where she rented a room at a cost of $99.64 per night ($94 plus $5.64 tax) until August 25. Ms. Griffin performed temporary duty away from her office from June 26 to 28 and July 31 to August 4. Her son, who was eight years old at the time, remained with her until August 5, when he left to visit relatives. On August 25, Ms. Griffin moved into a permanent residence in New Jersey.

Ms. Griffin submitted vouchers for reimbursement of TQSE she incurred while living in the hotel. The vouchers included costs of both lodging and meals. The costs of lodging are supported by documentation from the hotel. The costs of meals are not supported by any documentation. The meal costs shown on the vouchers are what Ms. Griffin describes as "honest estimates." She says that for two reasons, she did not keep records regarding the

meal costs. First, she understood that under the Department of Defense's Joint Travel Regulations (JTR), no documentation is required for any meal expense of less than $75, and she was confident that her total food expenses would be less than $75 per meal – indeed, less than $75 per day. Second, she knew that the total reimbursement she could receive for lodging and meal costs would be very little higher than her lodging costs, so detailed recordkeeping of meal costs would be unnecessary.

When the vouchers were submitted to DFAS for payment, a representative of that agency was concerned that the amounts listed for meals appeared excessive. The DFAS representative therefore asked the DLA Criminal Investigations Activity to investigate the matter. One of this Activity's investigators interviewed Ms. Griffin and several other persons. He found the facts described in the preceding paragraph. Based on these facts, he concluded that on the vouchers, Ms. Griffin "falsely listed a made-up dollar amount as the exact cost of each meal" and "has admitted that those figures were false." He believes that Ms. Griffin's actions were in violation of two criminal laws.[1] Buoyed by this report, DFAS considered that Ms. Griffin's claims were falsely submitted and that under the "tainted day rule," they must be denied.

Discussion

We have discussed the "tainted day rule" in two previous decisions. Under this rule, which "was first articulated by GAO [the General Accounting Office], a fraudulent claim for reimbursement for any part of a single day's subsistence expenses is said to taint with fraud the entire day's subsistence expenses." Kenneth R. Gould, GSBCA 15527-RELO, 01-2 BCA ¶ 31,566. In adopting the rule, we made clear that it applies only to situations in which the agency has reasonable suspicion of fraud supported by evidence "sufficient to overcome the usual presumption of honesty and fair dealing on the part of the claimant." Id. (quoting Department of the Air Force, 57 Comp. Gen. 664, 668 (1978)). "The rule does not apply in cases where the claimant is merely unable to provide supporting documentation for portions of his TQSE claim. In those cases, we have allowed reimbursement for parts of the claim for which supporting documentation does exist." Floyd S. Wiginton, GSBCA 15583-RELO, 01-2 BCA ¶ 31,605.

The record in this case contains not even a hint of fraud by Ms. Griffin. There is absolutely no basis for finding a "reasonable suspicion" that this employee behaved in

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[1]The laws are 18 U.S.C. § 287 (2000) ("Whoever makes or presents to any person or officer in the civilian, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.") and 18 U.S.C. § 641 ("Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof . . . [s]hall be fined under this title or imprisoned not more than ten years, or both.").

anything other than an honest and fair way. The tainted day rule has nothing whatsoever to do with this case. The thought that Ms. Griffin has violated criminal laws by making a false claim or knowingly converting the Government's funds to her own use is groundless. DFAS and the DLA Criminal Investigations Activity have thrown very serious charges against a Government employee, but they have no evidence to support those charges. We view her actions as perfectly reasonable under the circumstances, and in any event, as not affecting the only claim before us now, which is for the fully documented lodging expenses.

Under the Federal Travel Regulation (FTR), when an employee is to be reimbursed for actually-incurred TQSE, reimbursement can be no more than the "maximum allowable amount." 41 CFR 302-5.100 (2000). This amount consists of the sum of the "maximum daily amounts" for each of the days an employee spends in temporary quarters. Id.[2] The "maximum daily amount" is, for the employee herself, "the applicable per diem rate" for each of the first thirty days in temporary quarters, and three-quarters of that rate for each additional day in temporary quarters. For a member of the employee's immediate family who is under the age of twelve, the "maximum daily amount" is half "the applicable per diem rate" for each of the first thirty days and forty percent of that rate for each additional day. Id.; JTR C13225-A.3, .4 (May 1, 2000). "The applicable per diem rate," for locations within the continental United States (CONUS), is the "standard CONUS rate." 41 CFR 302-5.104; JTR C13225-A.1. The "standard CONUS rate," at the time Ms. Griffin moved to New Jersey, was $85 per day. 41 CFR ch. 301, app. A; JTR C13225-A.3 (note).

Applying these rules, we see that the maximum amount Ms. Griffin could receive in TQSE reimbursement was, for herself, $85 per day for each of her first thirty days in temporary quarters and $63.75 for each additional day; and for her son, $42.50 per day for each of the first thirty days and $34 per day for each additional day. As long as the two of them were in temporary quarters together, then, the maximum allowable amount was $127.50 for each of the first thirty days and $97.75 for each additional day. Thus, for the first thirty days they were in temporary quarters, the maximum allowable amount was $3,825; for the next forty-seven days in temporary quarters, the maximum allowable amount was $4,594.25; and for the final twenty days, when Ms. Griffin lived at the hotel by herself, the maximum allowable amount was $1,275. (As to the last twenty days, cf. James E. Roberts, GSBCA 15592-RELO, 01-2 BCA ¶ 31,567 (citing Robert E. Jacob, GSBCA 13792-RELO, 97-2 BCA ¶ 29,218) (no reimbursement of TQSE incurred while employee on vacation)). For the ninety-seven day period as a whole, the maximum allowable amount was $9,694.25. Ms. Griffin incurred $99.64 in lodging costs on each of the ninety-seven days she lived in the hotel – a total of $9,665.08 for the entire period. These documented costs were only $29.17 less than the maximum amount the employee could have received in TQSE reimbursement. Thus, the costs Ms. Griffin showed for meals on her vouchers were, as she believed, of very little significance in evaluating the vouchers. As long as the agency believed that she spent $29.17 for meals during the ninety-seven day period, it could have paid her the total maximum allowable amount.

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[2]We recognize that this understanding of the applicable FTR provision is different from the one we applied in Wiginton and some other decisions. To the extent that those decisions are inconsistent with the interpretation we give here, we will no longer follow them. The earlier decisions remain, however, final settlements of the claims at issue there.

We note additionally that Ms. Griffin is correct in believing that the JTR does not require documentation of TQSE meal expenses, except in instances where a single meal costs $75 or more. JTR C13220-A.2.b. As we have commented, "By not requiring receipts for all but very expensive meals, the JTR place the agency in a position of accepting employee assertions as to meal costs unless it can demonstrate that those assertions are not true." Wiginton (citing Okyon Kim Ybarra, GSBCA 15407-RELO, 01-1 BCA ¶ 31,334).

Ms. Griffin has reduced her claim to include only the costs of lodging. These costs were less than the maximum allowable amount and thus may be paid by the agency.[3] There is only one reason why the agency might pay less than the costs incurred. On six of the nights during her time in temporary quarters, Ms. Griffin was away from the office on temporary duty. If the agency reasonably believes that the employee did not act reasonably in retaining the hotel room in New Jersey while she was on temporary duty elsewhere, it may deduct $99.64 from her recovery for each of those nights. Carol A. Cassel, B-254216 (Jan. 11, 1994); Paul G. Thibault, 69 Comp. Gen. 72 (1989) (interpreting the provision at 41 CFR 302-5.16 when Ms. Griffin moved to New Jersey); JTR C13205-C.2.c(3). The total amount due Ms. Griffin in TQSE reimbursement is $9,694.25 (less deductions for the nights she was on temporary duty, if appropriate).

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STEPHEN M. DANIELS
Board Judge

[3]We note that the amounts paid by Ms. Griffin for her hotel room include state and/or local taxes. Should the taxes be treated separately from the room charges themselves? The answer is not important to this case because even including the taxes, the total amount Ms. Griffin claims is less than the maximum allowable amount. If the total had been more than the maximum, however, we would have had to respond to the question. The FTR references the "applicable per diem rate" (the "standard CONUS rate") prescribed in 41 CFR ch. 301, app. A, in determining the "maximum daily amount" of TQSE under the actual expense method. 41 CFR 302-5.100, -5.102. In applying this rate for temporary duty travelers, the FTR makes clear that taxes on reimbursable lodging costs are not included; they are reimbursable additionally as a miscellaneous travel expense. Id. 301-11.27. The FTR does not say, however, whether taxes on reimbursable lodging costs are included within the rate for the purpose of calculating TQSE entitlements for employees who are transferred to new permanent duty stations. We urge the General Services Administration to revise the FTR to clarify that agency's intentions as to the treatment of room taxes in determining TQSE reimbursement.