

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

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April 30, 2002

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GSBCA 15828-RELO

In the Matter of JOHN C. PERMAUL

John C. Permaul, Arlington, VA, Claimant.

Col. Willie D. Davenport, Chief, Office of Sports Management, National Guard Bureau, Arlington, VA, appearing for Departments of the Army and the Air Force.

**BORWICK**, Board Judge.

Claimant, John C. Permaul, a civilian employee of the Department of Defense, seeks reimbursement for incurred temporary quarters subsistence expenses (TQSE) in excess of the amounts granted by the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR). As the agency contends, it is not authorized to reimburse incurred TQSE expenses exceeding the maximum reimbursement permitted by regulation. This is true even though the agency's travel authorization to claimant may have mislead him as to the permissible per diem rate. However, our review of the record indicates that the agency has miscalculated claimant's TQSE entitlement and under-reimbursed him. According to the agency, it reimbursed claimant \$2700. Based on our review of the record, we conclude claimant is entitled to reimbursement of \$3570.

The facts shown by the record are as follows. The agency authorized claimant a permanent change of station (PCS) in the interest of the Government from the Netherlands to the Pentagon, Washington, D.C. Among other entitlements, the agency granted claimant reimbursement of sixty days maximum TQSE, but did not state rates for the "per diem" item under block twenty--"Estimated Cost"--of the travel authorization or, for that matter, for the items "travel," "other," or "total." The appropriated funds citation in the authorization did contain, however, a figure of \$9900 for TQSE. Claimant believed that he would be paid that amount for sixty days of TQSE. Thereafter, between January 12 and February 12, 2002, claimant secured quarters in the Washington, D.C., area costing nearly \$160 per day and incurred the expense on his credit card.

When claimant submitted his first reimbursement voucher, he was informed that the TQSE reimbursement would be limited to \$85 per day for the first thirty days of TQSE and \$63 per day for the remaining thirty days. Claimant then moved to cheaper temporary quarters. Claimant has incurred total lodging expenses of \$6279, and the agency has paid

claimant \$2700. The difference between those amounts is \$3579. Claimant seeks reimbursement of that difference.

The agency's refusal to pay claimant the full amount of his lodging expenses incurred during claimant's period in temporary quarters is in accord with regulation which limits claimant's TQSE payment to the standard continental United States (CONUS) rate of \$85 per day for the first thirty days and three quarters of that amount, or \$63.75 per day for additional days of TQSE. 41 CFR 302-5.100, 5.102 (2001); JTR C4550-F, C13205-A, C13225-A.2.c.,d.

Travel orders which are vague or misleading as to the per diem rate during the TQSE period do not entitle claimant to a TQSE payment greater than the maximum amount specified by regulation. As we explained in Lee A. Gardner, GSBCA 15404-RELO, 01-2 BCA ¶ 31,456, at 155,326:

It is well established that an agency may not alter travel orders retroactively to authorize recoupment of an expense that is not permitted by statute or regulation or to increase or decrease entitlements fixed by statute or regulation. Thomas W. Schmidt, GSBCA 14747-RELO, 00-1 BCA ¶ 30,858; Daniel P. Carstens, GSBCA 14519-RELO, 98-2 BCA ¶ 30,048; Michael K. Vessey, B-214886 (July 3, 1984); Erwin E. Drossel, B-203009 (May 17, 1982). Here, the agency's travel authorizing personnel mistakenly entered the wrong per diem rate on claimant's travel authorization. Such mistake does not operate to expand the entitlement to reimbursement established by regulation. The Government is not bound by the erroneous advice of its officials even when the employee has relied on this advice to his detriment. E.g., John J. Cody, GSBCA 13701-RELO, 97-1 BCA ¶ 28,694 (1996). Erroneous travel orders, reflecting mistaken assumptions on the part of authorizing officials, cannot obligate the Government to expend monies contrary to regulation. Charles M. Ferguson, GSBCA 14568-TRAV, 99-1 BCA ¶ 30,299; James F. Black, GSBCA 14548-RELO, 98-2 BCA ¶ 29,876; William Archilla, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799.

Claimant states that he had received his PCS orders two weeks before departing Europe and therefore he had no time to reference the JTR for PCS information. Nevertheless, he is charged with knowledge of the regulations. Elizabeth Lynn Taylor, GSBCA 15128-RELO, 00-1 BCA ¶ 30,749. While it is unfortunate that the agency issued a misleading travel authorization, that fact provides no basis for claimant's recovery of the \$3579 reimbursement demanded by claimant.

This conclusion, however, does not end the matter. Based on the record before us, it is apparent that the agency has miscalculated claimant's entitlement under the FTR and JTR. The agency says that claimant stayed in temporary quarters from January 12 through February 26. He stayed in quarters costing nearly \$160 per day from January 12 through February 12, and therefore exceeded the maximum daily rate for the first thirty days (January 12 through February 10). Claimant would be entitled to reimbursement of \$2550 for TQSE for that period (\$85 x 30).

Claimant's maximum entitlement for the remaining period--February 11 through February 26, a period of 16 days--would be limited to the maximum rate of \$63.75 per day. Claimant stayed in cheaper quarters for fourteen of sixteen days in that period. The agency says that for the fourteen days, he incurred \$1179 of hotel expenses or a rate of \$84.21 per day. His maximum reimbursement for that period would thus be \$1020 ( $\$63.75 \times 16$ ). Claimant's total allowable reimbursement would be \$3570, not the \$2700 the agency has reimbursed claimant. Claimant is entitled to reimbursement of the difference between these two figures -- \$870.

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ANTHONY S. BORWICK  
Board Judge