Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 1, 2002

GSBCA 15921-RELO

In the Matter of DAVID MENDOZA

David Mendoza, Hawthorne, CA, Claimant.

Anthony P. Riccio Jr., Chief, Financial Services Division, Directorate of Financial Management and Comptroller, Air Force Space and Missile Systems Center, Los Angeles Air Force Base, CA, appearing for Department of the Air Force.

NEILL, Board Judge.

Claimant, David Mendoza, is a civilian employee of the United States Air Force. As part of a recent permanent change of station (PCS) move, he was authorized an allowance for temporary quarters subsistence expenses (TQSE). He arranged for permanent quarters on the assumption that he would be reimbursed for these expenses based on the per diem for the locality where he was lodged rather than on the standard per diem for the continental United States (CONUS). The agency refuses to reimburse Mr. Mendoza based upon the maximum allowable per diem for the locality, notwithstanding his contention that he was not correctly informed of the applicable per diem rate. The claimant asks that we review the agency's denial of his claim. For the reasons set out below, we affirm the agency's determination.

Background

In March 2002, Mr. Mendoza was transferred from Yongsan Army Garrison in Seoul, Korea, to the Air Force Space and Missile Command at Los Angeles Air Force Base in El Segundo, California. His orders authorized TQSE for a period of sixty days. Mr. Mendoza contends that he was never briefed either before departure from Korea or after arrival in California on the guidelines for calculating TQSE. Instead, he appears to have assumed that the allowable maximum would be based on the applicable per diem for the area where he was temporarily lodged. Before leaving Korea, Mr. Mendoza made reservations at the Government rate at a hotel in the Los Angeles area. He stayed in this hotel until he moved into permanent quarters approximately thirty-five days after arrival.

Mr. Mendoza states that it was not until after he received payment on his TQSE voucher for the first thirty days of temporary quarters that he learned the maximum allowable per diem for actual expense TQSE is based upon the maximum CONUS per diem rate of $85 rather than on the higher maximum per diem rate of $145 for the Los Angeles area. Because of the agency's alleged failure to advise him of this fact, Mr. Mendoza claims that he should be reimbursed based upon the maximum allowable per diem rate for the locality rather than on the standard CONUS rate.

The agency denies that Mr. Mendoza was not briefed regarding his PCS benefits on arrival at Los Angeles Air Force Base on March 27, 2002. It writes that its standard practice is to conduct a one-on-one briefing of each newly arrived transferred employee and that the employee is encouraged to call with any questions he or she might later have regarding PCS benefits. Nevertheless, the agency concedes that it is not able to prove that it actually followed this practice with regard to Mr. Mendoza. The agency also has advised us that, in processing Mr. Mendoza after his arrival at Los Angeles, it assumed that the TQSE allowance authorized for him was to be "actual expense TQSE" rather than "fixed TQSE" because "fixed TQSE" is limited to a maximum of thirty days while the authorization in Mr. Mendoza's orders was for sixty days.

Discussion

It is clear from the tenor of Mr. Mendoza's letter to us that he believes the Government rather than himself should bear the consequences of his mistaken assumption that the local maximum per diem rate rather than the CONUS-wide rate applied to his allowable TQSE. We can certainly appreciate the strength of this argument if, in fact, it is true that the claimant was not briefed on this particular aspect of the TQSE calculation. However, whether he was or was not briefed has no bearing on how we must decide this claim.

Persuasive as the claimant's argument might be, the fact remains that section C13205-A of the Joint Travel Regulations (JTR), to which Mr. Mendoza is subject as a civilian employee of the Department of Defense, expressly provides that the actual expense method of TQSE is an actual expense allowance based upon the standard CONUS per diem rate for temporary quarters occupied in CONUS localities.[1] Neither this Board nor Mr. Mendoza's agency has the authority to waive application of this provision. It is well established that, absent a specific provision in statute or regulation which might permit it under certain circumstances, neither an agency nor this Board has the authority to waive the applicability of JTR or FTR provisions for any federal employee who is subject to them. E.g., Thomas A. Riopelle, GSBCA 15722-RELO, 02-1 BCA ¶ 31,820; Daniel H. Coney, GSBCA 15444-RELO, 01-2 BCA ¶ 31,500; Fred Borakove, GSBCA 15379-RELO, 01-1 BCA ¶ 31,409; Tanya Cantrell, GSBCA 15191-RELO, 00-1 BCA ¶ 30,894; Michael J. Kunk, GSBCA 14721-RELO, 99-1 BCA ¶ 30,164 (1998); Defense Intelligence Agency Employee, GSBCA 14745-RELO, 99-1 BCA ¶ 30,117 (1998). Furthermore, even if it were to be proven that the agency failed to inform Mr. Mendoza properly of the basis for calculating his

[1] This provision of the JTR implements for civilian employees of DOD an identical provision currently found in the Federal Travel Regulation (FTR) at 41 CFR 302-6.102 (FTR 302-6.102) (2002).

allowable TQSE, it is equally well settled that incorrect or incomplete advice provided by an agency employee does not provide an agency with authority to expend public funds contrary to provisions of published regulations. Devon Scott Shelley, GSBCA 15867-RELO, 02-2 BCA ¶ 31,968; Kevin S. Foster, GSBCA 13639-RELO, 97-1 BCA ¶ 28,688 (1996) (citing Office of Personnel Management v. Richmond, 496 U.S. 414 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947)).

In short, although the misunderstanding between Mr. Mendoza and his agency is undoubtedly regrettable, his claim must be denied.

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EDWIN B. NEILL
Board Judge