

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

February 2, 2004

GSBCA 16326-RELO

In the Matter of MATTHEW D. MURPHY

Matthew D. Murphy, Lemoncove, CA, Claimant.

Shirley L. Autry, Deputy Director, Finance, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

PARKER, Board Judge.

Background

When Matthew D. Murphy was transferred by his employer, the United States Army Corps of Engineers (Corps), from Coarsegold, California, to Lemoncove, California, in April 2003, he moved into temporary quarters at the home of a friend who also worked for the Corps. According to Mr. Murphy, the friend did not normally rent rooms in his house but agreed to rent a room to Mr. Murphy for \$300 per month (a total of \$1200 for three months). The payments are supported by signed receipts. The Corps denied Mr. Murphy's claim for reimbursement of those costs and he has asked the Board to review the agency's decision.

Discussion

When an employee secures temporary lodgings in a private residence, questions may arise as to whether the expenses claimed were actually spent for the lodgings, or were merely transfers of money arranged for the purpose of supporting a claim against the Government and thereby enriching both the employee and the host. The general rule in this situation is as follows: if the employee can show that payment was for the use of quarters which were furnished as a business proposition, reimbursement of reasonable costs incurred is appropriate. The best evidence that a business arrangement is involved is the demonstration of a continuing practice of the homeowner renting the room for an established price. Guy E. Mercier, GSBCA 13795-RELO, 97-1 BCA ¶ 29,925.

Where the relocated employee is unable to demonstrate a bona fide business relationship through evidence of a continuing practice of renting the room for an established price, the Board (following the rule set forth by the Comptroller General, the Board's

predecessor in deciding cases involving relocation of Federal employees) has looked to a provision in the Federal Travel Regulation (FTR) that addresses allowable lodging expenses when lodging with "friends(s) or relative(s)" during a temporary duty assignment. The FTR provision states:

You may be reimbursed for additional costs your host incurs in accommodating you only if you are able to substantiate the costs and your agency determines them to be reasonable. You will not be reimbursed the cost of comparable conventional lodging in the area or a flat "token" amount.

41 CFR 301-12(c) (2003); John Wesley Summers, GSBCA 14600-RELO, 98-2 BCA ¶ 29,975. Of course, if the friend or relative is in the business of renting on a regular basis the living space for which the employee incurs occupancy costs (for example, if the friend or relative is a hotel operator), this limitation is not applicable. The critical factor in distinguishing one of these situations from the other is whether the host and the traveler have an arm's-length business relationship. Michael S. Knezevich, GSBCA 14398-TRAV, 98-1 BCA ¶ 29,607; Mercier.

Mr. Murphy has not demonstrated the existence of an arm's-length business relationship with his landlord. The record shows that the friend/co-worker did not regularly rent rooms at an established rate. Accordingly, Mr. Murphy may not be reimbursed on this basis for the amounts paid. Because Mr. Murphy was lodging with a "friend," his maximum reimbursement is limited to the "additional costs [his] host incurs for accommodating [him]." 41 CFR 301-12(c). In order to be reimbursed, however, the employee must "substantiate" these costs. Id. Mr. Murphy has provided no evidence of additional costs incurred by his host; the receipts provided in support of his claim show amounts paid to his host but say nothing about additional costs incurred by the host.

Decision

The claim is denied.

ROBERT W. PARKER
Board Judge