

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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May 11, 2004

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GSBCA 16352-RELO

In the Matter of DAMON WAYNE LUNSFORD

Damon Wayne Lunsford, Corpus Christi, TX, Claimant.

Judy Hughes, Travel Pay Services, Systems and Procedures, Defense Finance and Accounting Service, Columbus, OH, appearing for Department of Defense.

**GOODMAN**, Board Judge.

Claimant, Damon Wayne Lunsford, is a civilian employee of the Department of the Army. He has requested that this Board review the agency's denial of reimbursement of costs he incurred in accomplishing a permanent change of station (PCS).

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## Factual Background

Claimant was issued PCS travel orders on April 17, 2003, to transfer from Belgium to Texas, to report for duty at his new permanent duty station on June 18, 2003. The original travel orders did not authorize temporary quarters subsistence expenses (TQSE), but authorized the gaining activity to amend the orders as necessary. In mid-June, a personnel officer at Redstone Arsenal, Huntsville, Alabama (the gaining activity's personnel office), corresponded via e-mail with claimant regarding authorization for TQSE. Claimant made it clear to the personnel officer that he required sixty days of temporary quarters. The personnel officer believed that he could authorize sixty days of TQSE based on the fixed calculation method (TQSE(F)) for that period of time. On June 20, 2003, claimant's travel orders were amended to include authorization for TQSE(F) for sixty days.

In July 2003, after claimant began his occupation of temporary quarters, he was informed by the Customer Service Branch of the DFAS Columbus Center Travel Operations Division that the maximum period that may be allowed under the TQSE fixed rate method is thirty days. Claimant discussed the matter with his supervisor, and they contacted the Finance Office at Redstone Arsenal to correct the error. By that time, claimant realized he was in need of an additional ten days of TQSE and requested an extension. On July 24, 2003, claimant's travel orders were amended by the gaining activity to reflect the agency's original intent to authorize TQSE for sixty days, and an additional ten days were added,

granting claimant's extension request. Because TQSE(F) could only be authorized for thirty days, the amended orders authorized reimbursement of seventy days of TQSE by the actual expense method (TQSE(AE)).

In September 2003, claimant submitted his travel voucher for reimbursement of TQSE(AE) for the seventy-day period from June 18, 2003, through August 26, 2003. The DFAS Columbus Center Travel Operations Division reimbursed him \$3030 for the first thirty days of TQSE calculated by the fixed rate method and denied the reimbursement of the remainder. In November 2003, claimant appealed the settlement of his claim to the agency, and his appeal was denied. He then sought review from this Board of the agency's denial.

### Discussion

Claimant sought reimbursement of seventy days of TQSE calculated by the actual expense method, as authorized in his travel orders which were amended during his occupancy of temporary quarters. In reimbursing claimant for only thirty days of TQSE calculated by the fixed method, the agency relied upon claimant's original travel orders, which authorized reimbursement of TQSE by the fixed method for sixty days.

The agency denied claimant the remainder of the amount that he sought, relying upon the Joint Travel Regulations (JTR) provision which states: "Once the employee selects a TQSE method, the selection may not be changed." JTR C13305 (June 2003). The agency also relied upon our decision in Samuel E. Jones, GSBCA 15770-RELO, 02-2 BCA ¶ 31,897, where we held that an employee could not change his selection of the TQSE fixed method of reimbursement even when that decision was based on erroneous information. In that case, the employee elected fixed TQSE based on erroneous advice that the fixed method would calculate reimbursement based on a per diem rate of \$109 per day. When the employee submitted his travel voucher, he was reimbursed at a lower per diem rate. The agency requested the Board's decision as to whether it could retroactively amend the employee's travel orders to authorize TQSE reimbursement based on the actual expense method. We held that:

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.

02-2 BCA at ¶ 157,593.

The circumstances of the instant case differ from those in Jones. In Jones, the employee elected TQSE calculated by the fixed method and submitted his travel voucher on that basis. It was only after he was denied the amount he anticipated that the agency asked whether it could amend the travel orders retroactively. While the claimant had received erroneous advice as to the calculation of the TQSE reimbursement, the authorization of

TQSE at the fixed rate for thirty days was not erroneous and complied with statute and regulation. In the instant case, claimant's initial travel orders, which authorized sixty days of TQSE calculated at the fixed rate, were in error. The applicable regulation reads in relevant part:

#### LIMITATIONS

1. The authorizing/order-issuing official, not the employee, determines if TQSE(F) is necessary.
2. If the authorizing/order-issuing official chooses, TQSE(F) may be offered to the employee.
3. The employee may decline the TQSE(F) offer and choose to be reimbursed by TQSE(AE) if the authorizing/order-issuing official authorizes/approves TQSE.
4. TQSE(F) is a lump-sum payment based on the locality per diem rate at the new PDS.
5. TQSE(F) may be authorized/approved for the number of days determined necessary, up to 30 days.

JTR C13302 (June 2003).

According to the regulation, the determination to offer TQSE(F) to the employee is made by the agency. In this instance, the ordering official was aware that claimant required at least sixty days of TQSE, but made an erroneous determination that TQSE(F) was necessary and authorized reimbursement for a sixty-day period, contrary to the regulatory limitation that this method of reimbursement could only be authorized for thirty days. During claimant's occupation of temporary quarters, this error was discovered by the agency, and the agency issued amended orders which corrected the error by stating that reimbursement for TQSE would be calculated by the actual expense method, the only method of reimbursement which would have fulfilled the agency's original intent -- to provide for reimbursement of TQSE for sixty days.

In amending claimant's travel orders, the agency relied upon the following provision of the JTR:

#### TRAVEL ORDER AMENDMENT

##### A. Policy.

An issued travel order may be changed or corrected (within certain limits) by issuing an amendment. An amendment may be issued before or after completion of travel to:

... .

3. include omitted pertinent information,
4. change allowances for unperformed travel or duty,
5. correct erroneous information or clerical errors that don't affect reimbursement retroactively.

JTR C3053 (June 2003).

In amending claimant's travel orders, the agency included pertinent information, changed the allowances for the unperformed occupation of temporary quarters, and corrected erroneous information -- the determination that TQSE would be reimbursed by the fixed method rather than the actual method.

Even if the amendment is viewed to affect the retroactive reimbursement of the first thirty days of occupancy of temporary quarters, which had occurred by the time the amendment was issued, the above regulation is not an absolute impediment to this amendment. We commented on a previous version of this regulation in Bryan P. Byrnes, GSBCA 14195-TRAV, 98-1 BCA ¶ 29,535:

The JTR provision . . . which prohibits amendments of travel orders with retroactive effect changing the basis of reimbursement specifically refers to a decision of the Comptroller General in 28 Comp. Gen. 732 (1949). That decision recites the general rule regarding retroactive amendments of travel orders but makes no mention of any exceptions to this rule. Nevertheless, in numerous decisions both before and after that appearing in 28 Comp. Gen. 732, the Comptroller General recognized exceptions to this general rule. One set of exceptions is that travel orders may be amended with retroactive effect when the error is apparent on the face of the original orders or the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence in preparing the orders [citations omitted]. . . . Another exception permits the retroactive amendment of travel orders if the original orders do not conform to applicable statute and regulation.

98-1 BCA at 146,426.

The amendment of claimant's travel orders was necessary because the original orders authorizing reimbursement of TQSE(F) for sixty days clearly omitted the proper reference to TQSE(AE) which would have allowed the agency to reimburse claimant for the sixty-day period which the agency included in the travel orders. The orders as written did not conform to statute or regulation. The amendment of the orders to authorize TQSE(AE) for the intended period was therefore permissible, in order to include pertinent information originally omitted and to conform the original travel orders to applicable statute and regulation. The extension of the TQSE period for an additional ten days was also permissible.

#### Decision

The amendment of claimant's travel orders was proper. Claimant is entitled to reimbursement of TQSE expenses as stated in his amended travel orders dated July 24, 2003.

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ALLAN H. GOODMAN

Board Judge