

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 15, 2004

GSBCA 16420-RELO

In the Matter of EMILE R. RANDAZZO

Emile R. Randazzo, Omaha, NE, Claimant.

Susan C. Lauga, Authorized Certifying Officer, National Finance Center, Office of the Chief Financial Officer, Department of Agriculture, New Orleans, LA, appearing for Department of Agriculture.

GOODMAN, Board Judge.

Claimant, Emile R. Randazzo, is an employee of the Department of Agriculture. The agency has asked for an advance decision, pursuant to our Rule 501, 48 CFR 6105.1 (2003), with regard to reimbursement of expenses resulting from claimant's permanent change of station (PCS).

Background

In December 2003, claimant accomplished a PCS from his old duty station, New Orleans, Louisiana, to his new duty station, Omaha, Nebraska. Before accomplishing his move, claimant elected to receive reimbursement for temporary quarters subsistence expenses (TQSE) by the fixed amount method for thirty days. The reimbursement by this method totaled \$4770. Claimant occupied temporary quarters for thirteen days and submitted his travel voucher, requesting reimbursement for the total amount of \$4770. The agency has asked whether claimant should be reimbursed for the total amount of \$4770 pursuant to the fixed amount method which claimant elected, or whether the reimbursement should be pro-rated based upon the actual number of days claimant occupied temporary quarters.

Discussion

Statute provides in pertinent part:

Under regulations prescribed under section 5738, an agency may pay to or on behalf of an employee who transfers in the interest of the Government –

. . . .

an amount for subsistence expenses, that may not exceed a maximum amount determined by the Administrator of General Services, instead of the actual subsistence expense authorized in subparagraph (A) of this paragraph.

5 U.S.C. § 5724a(c)(1)(B) (2000).

Pursuant to the above statutory authority, the Federal Travel Regulation (FTR) in effect at the time claimant reported for duty, and in effect today, provides in pertinent part in its question and answer format:

What am I paid under the fixed amount reimbursement method?

If your agency offers and you select the fixed amount TQSE reimbursement method, you are paid a fixed amount for up to 30 days. No extensions are allowed under the fixed amount method.

41 CFR 302-6.200 (2003). The FTR provides that the amount of payment is determined for the transferred employee by taking the number of days the agency authorizes TQSE and multiplying that number of days by .75 of the maximum per diem rate prescribed in chapter 301 of the FTR for the locality of the new official station. Id. 302-6.201.

Additionally, and significantly, the FTR provides:

May I retain any balance left over from my TQSE reimbursement if my fixed amount is more than adequate?

Yes, if your fixed TQSE amount is more than adequate to cover your TQSE expenses any balance belongs to you.

41 CFR 302-6.203. This provision was added by FTR Amendment 98 and was effective February 19, 2002. See 66 Fed. Reg. 58,194 (Nov. 21, 2001). GSA explained in the Federal Register that the purpose of the amendment, as it pertained to TQSE, was to redesignate allowances as part 302-6 and to "[add] a new question 302-6.203 which clarifies that any balance, after expenses incurred under fixed amount reimbursement belongs to the employee." Id.

The FTR provides that the agency has the discretion to offer the fixed amount method of TQSE reimbursement. 41 CFR 302-6.200. The FTR also states that agencies must balance several factors in determining whether to offer that method. Those factors include the greater ease of administration of the fixed amount method and the relative costs of each method, taking into account the maximum time allowed under the fixed amount method as against the 120-day maximum of the actual expense method. Id. 302-6.304.

Before claimant's transfer, the agency offered him the choice of TQSE reimbursement under the actual expense method or \$4770 for thirty days of fixed amount TQSE reimbursement. After claimant chose the fixed amount method, the agency authorized payment of that amount in claimant's travel authorization. Claimant is entitled to the fixed amount.

In Jason Knapp, GSBCA 16408-RELO (July 14, 2004), the claimant elected the fixed amount method and occupied temporary quarters for only three days. We held that claimant was entitled to the total fixed amount authorized, stating:

The agency cannot now reduce claimant's TQSE fixed amount reimbursement. To do so would result in a violation of 41 CFR 302-6.203, which entitles employees to retain the balance of their fixed amount TQSE reimbursement if their reimbursement is more than adequate. Lori Giannantonio, GSBCA 16208-RELO, 04-1 BCA ¶ 32,466.

The agency does have discretion to offer the fixed amount method of TQSE reimbursement for up to thirty days as opposed to the actual expense method. 41 CFR 302-6.200. However, as indicated by the language of 41 CFR 302-6.200 and 302-6.304, the determination to offer the fixed amount method of reimbursement and for how many days to offer it are clearly prospective and the agency must make those determinations in advance. Since the agency offered claimant thirty days of TQSE reimbursement at [a total amount], the agency may not change its mind after claimant completed his stay in temporary quarters. Claimant is entitled to be reimbursed [the total amount], regardless of his three-day stay in temporary quarters.

Decision

Claimant is entitled to reimbursement of the total fixed amount of \$4770.

ALLAN H. GOODMAN
Board Judge