Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 3, 2006

GSBCA 16712-RELO

In the Matter of DONALD D. FITHIAN, JR.

Donald D. Fithian, Jr., Tampa, FL, Claimant.

Master Sergeant Ronald J. Peak, Chief, Financial Services, Department of the Air Force, MacDill Air Force Base, FL, appearing for Department of the Air Force.

HYATT, Board Judge.

In April 2005, claimant, Donald D. Fithian, Jr., a civilian employee of the Department of the Air Force, was transferred from the Naval Air Station in Key West, Florida, to MacDill Air Force Base (AFB) near Tampa, Florida. He seeks the Board's review of the Air Force's decision to deny his claim for the per diem expenses component of temporary quarters subsistence expenses (TQSE).

Background

Mr. Fithian was authorized various relocation benefits in conjunction with his transfer, including sixty days of actual expense TQSE. At the time that he received his permanent change of station (PCS) orders he owned two homes: one at his old duty station in the Key West area and one in the vicinity of Tampa, Florida. He effected his move to MacDill AFB by moving into his house in the Tampa area. Claimant did not ship his household furnishings from the Key West residence right away, since he had some furnishings already in the Tampa home, which were available for his use.

Mr. Fithian has not requested payment of the lodgings component of his TQSE, but does maintain that he should recover that portion of the allowance that provides for subsistence expenses – meals and incidentals -- while he was authorized TQSE. The Air Force disallowed his claim for $994.30 in subsistence expenses for the month of May 2005 on the ground that his eligibility for TQSE ceased when he moved into his permanent quarters, the home he owned in Tampa.

Discussion

By statute, when the Government transfers an employee from one permanent duty station to another in the interest of the Government, the agency has the authority to pay the subsistence expenses the employee incurs while occupying temporary quarters, provided certain requirements are met. 5 U.S.C. § 5724a(c) (2000). The Federal Travel Regulation (FTR) implements the statute; the Joint Travel Regulations (JTR), applicable to civilian employees of the Department of Defense, supplement the FTR. Both the FTR and the JTR recognize that the purpose of a TQSE allowance is to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary for the relocating employee to occupy lodging obtained for the purpose of temporary occupancy while arranging for permanent quarters at the new duty station. 41 CFR 302-6.1, -6.3 (2005); JTR C13110; *see David S. Reinhold*, GSBCA 16334-RELO, 04-1 BCA ¶ 32,576.

TQSE is intended to be provided for only so long as necessary until the employee can move into permanent residence quarters. 41 CFR 302-6.300. Eligibility for actual expense TQSE ends whenever a transferred employee "and/or any member of [that employee's] immediate family occupies permanent residence quarters." *Id.* 302-6.108. Once the eligibility for TQSE ends, no portion of that allowance may be paid. As the Board has stated in a case similar to this one:

> Under the applicable regulations, one is either in temporary quarters, and therefore permitted to receive reimbursement for both lodging and meals, or in permanent quarters, and therefore permitted to receive reimbursement for neither. No half-way station exists.

Charles F. Ruerup, GSBCA 15955-RELO, 03-1 BCA ¶ 32,227. Because Mr. Fithian occupied his own residence at the new duty station immediately upon reporting for duty, and had furnishings available for his use, he was never eligible to receive TQSE. *Id.*; *accord Jeffrey Dewey*, GSBCA 16106-RELO, 04-1 BCA ¶ 32,445 (2003).

Mr. Fithian contends that the Comptroller General's decision in *Dimitri & Eugenia Arensburger*, B-257926.2 (Oct. 2, 1996), supports his claim. That case involved temporary duty (TDY) travel rather than relocation travel, however. The Arensburgers owned a residence at their permanent duty station in Washington, D.C., and owned a second residence in Geneva, Switzerland. As employees of the State Department, they traveled frequently for official business from their permanent duty stations in Washington, D.C., to Geneva, and chose to stay at their residence while on official travel there. The Comptroller General recognized that in the circumstances it was appropriate to pay that portion of the travel per diem allowance that covered meals and incidental expenses, because the employees, although occupying their own residence, were not working at their official stations. The Board has also followed this reasoning. *Dimitri & Eugenia Arensburger*, GSBCA 14514-TRAV, 98-2 BCA ¶ 30,055.

This rule, which is followed with respect to employees who travel to perform official business away from the vicinity of their permanent duty stations, is not applicable to an employee accomplishing a PCS move. Ordinarily, an employee cannot be paid a per diem allowance when at his or her permanent duty station. 41 CFR 301-11.1; JTR C4552-C*; Michael G. Stevens*, GSBCA 16652-TRAV, 05-2 BCA ¶ 33,065; *Jeffrey L. Pesler*, GSBCA 15704-TRAV, 04-1 BCA ¶ 32,523. TQSE creates an exception to this prohibition based on the employee's need to find suitable permanent quarters in a new location. Mr. Fithian is not eligible for a per diem allowance covering meals and incidental expenses based on the *Arensburger* rationale because he is working at his official station and is not in a travel status. He is not eligible for TQSE because he occupied his permanent quarters at the new official station immediately upon reporting to MacDill AFB. Thus, the Air Force properly denied his claim.

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CATHERINE B. HYATT
Board Judge