Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 22, 2006

GSBCA 16805-RELO

In the Matter of LAURIE FENWOOD

Laurie Fenwood, Atlanta, GA, Claimant.

Elena Delgado, Supervisory Financial Analyst, Albuquerque Service Center, Forest Service, Albuquerque, NM, appearing for Department of Agriculture.

HYATT, Board Judge.

In September 2005, James and Laurie Fenwood, a dual-career married couple both employed by the United States Department of Agriculture's (USDA's) Forest Service, transferred to Atlanta, Georgia, from Vallejo, California, their previous duty station. The transfer was prompted by a promotion for Mr. Fenwood in Atlanta. Although her position did not change, Mrs. Fenwood was permitted by the agency to change her duty station to Atlanta, Georgia, to accommodate her spouse. In addition, the agency determined that this move was in the interest of the Government because of the salary cost saving associated with the change of locality.

The Fenwoods elected separate relocation benefits and were issued separate travel authorizations as authorized by the Federal Travel Regulation (FTR). Their transfers were effective at virtually the same time, and they traveled together to their new duty station. They were each authorized temporary quarters subsistence expenses (TQSE) allowances. Following the advice of agency personnel, they ultimately both opted for the fixed amount reimbursement.

When the Fenwoods submitted their claims for reimbursement of temporary quarters expenses, the USDA's National Finance Center took the position that they could not both be reimbursed fully under the fixed amount option. Instead, the National Finance Center determined that Mr. Fenwood would be reimbursed the full fixed rate amount of seventy-five percent of the locality per diem rate for thirty days. Mrs. Fenwood was restricted to a spouse's entitlement of twenty-five percent of the locality per diem rate for thirty days.

The issue presented to the Board is whether, under their separate authorizations, each of the Fenwoods should receive the full amount of the fixed rate TQSE allowance or whether, as the agency contends, they must be limited to the allowance that would be paid to one employee traveling with a dependent spouse. In addressing this issue, claimant points out that, under the lump sum option, she and her spouse were individually entitled to be reimbursed thirty days of TQSE for the amount of $3624 each, for a total of $7248. Since they in fact remained in temporary quarters for more than sixty days, she notes that had they elected the actual method of TQSE reimbursement, they would have claimed a total of $9555 ($4777.50 each for sixty days).

Discussion

Under the Federal Travel Regulation (FTR), when two or more members of a household are government employees relocating at the same time, the employees are offered two options: (1) they may elect separate authorizations for the move, in which case neither employee is eligible for allowances as a member of the immediate family, or (2) only one employee will receive the available allowances and the other will be eligible for relocation allowances solely as a member of the immediate family. 41 CFR 302-3.200 (2005); *see James D. Fenwood*, GSBCA 15104-RELO, 00-1 BCA ¶ 30,658 (1999). If the employees elect to be reimbursed separately, the agency "shall not make duplicate reimbursement for the same claimed expenses." 41 CFR 302-3.201. It has been recognized that, in some circumstances, couples who elect separate authorizations may be reimbursed more fully for the expenses of their moves, even though they are not permitted duplicate reimbursement for the same expenses. *James Davidson*, GSBCA 16727-RELO, 06-1 BCA ¶ 33,221; *Russell Showers*, GSBCA 16608-RELO, 05-2 BCA ¶ 33,051.

With respect to TQSE, the FTR permits agencies to offer, in addition to the actual expense method of TQSE, the alternative method of "fixed amount" reimbursement for up to thirty days. The Board has recently noted that "[t]he determinations to offer the fixed amount method of reimbursement and the number of days offered are clearly prospective, and the agency must make those determinations in advance." *Larry A. Heath*, GSBCA 16803-RELO (Mar. 20, 2006) (citing 41 CFR 302-6.200, -6.304). If the agency offers a choice, the employee selects the one that he or she prefers. 41 CFR 302-6.11. Thirty days is the maximum entitlement -- no extensions are permitted. *Id.* 302-6.200. Once that choice

is made the employee does not have the option to change it should he or she have a need to occupy temporary quarters for more than the period authorized. *E.g.*, *Elmore Patterson, III*, GSBCA 16824-RELO (Apr. 12, 2006); *Marsha M. Webb (Dompreh)*, GSBCA 16542-RELO, 05-2 BCA ¶ 33,006. No additional payment can be made if the amount authorized is inadequate to cover an employee's needs; conversely, if the amount authorized turns out to be more than adequate to cover TQSE expenses, or the employee stays in temporary quarters for less time than is authorized, the balance belongs to the employee. 41 CFR 302-6.202, -6.203; *Heath*. Under the fixed amount method, the employee simply receives the lump sum authorized. There is no requirement to submit receipts or otherwise account for how the payment was used. 41 CFR 302-6.304(a); *Heath*.

In this case, after offering both of these employees the option to elect fixed rate reimbursement of TQSE expenses for a period of thirty days, and encouraging the Fenwoods to take that option, the agency had second thoughts about whether this choice should have been permitted. The primary rationale seems to be that providing separate full fixed rate allowances would be tantamount to paying duplicate expenses for temporary quarters. That is not really the case, however, as claimant points out, because there is no requirement to account for the money and thus no way to determine what expenses the money was used to cover. Thus, there is no clear basis for concluding that the Fenwoods would actually receive a duplicate payment.[1]

The agency offered each employee the option to elect fixed amount TQSE for thirty days. Both of the Fenwoods elected this option and their travel orders reflected this. Given that claimant and her spouse also elected separate travel authorizations, they were both entitled to be paid the full fixed rate allowance available to an employee. By reducing Mrs. Fenwood's entitlement to the fixed amount available for a spouse accompanying the relocating employee, the agency in effect retroactively amended her travel orders to nullify her election of a separate travel authorization as to TQSE. In doing this, the agency has run afoul of the well-established rule that, once travel has been performed, properly issued travel orders may not be amended to increase or decrease the rights of the employee. *See*, *e.g.*, *Gracelyn Eulanda James*, GSBCA 16677-RELO, 06-1 BCA ¶ 33,167 (2005).[2]

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[1] Mrs. Fenwood's statement that she and her spouse actually occupied temporary lodging for more than sixty days would suggest that, in fact, the couple did not receive a windfall through the election of this option.

[2] Although there are exceptions to this rule, permitting modification of orders to correct obvious errors or omissions of provisions that were clearly intended to be included, *Bryan P. Byrnes*, GSBCA 14195-TRAV, et al., 98-1 BCA ¶ 29,535, none of these exceptions apply here.

We note that if USDA continues to be concerned that the availability of the fixed amount method of paying TQSE may lead to excessive or duplicate payments in circumstances where transferring spouses have elected separate travel authorizations, the FTR does not require agencies to offer this option to every employee. Agencies should consider factors such as this, and the other considerations set forth in the FTR in section 302-6.304, in deciding as a policy matter when and under what circumstances they are willing to provide relocating employees with the fixed amount option.

Decision

The claim is granted.

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CATHERINE B. HYATT
Board Judge