

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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June 29, 2006

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GSBCA 16883-RELO

In the Matter of MARILYN B. LAMBOI

Marilyn B. Lamboi, Ridgeland, MS, Claimant.

JoAnne Rountree, Supervisor, Travel Section, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

**DANIELS**, Board Judge (Chairman).

This case calls on us to consider the impact of General Services Administration (GSA) Bulletin FTR (Federal Travel Regulation) 05-06, which addresses travel and associated relocation expenses of federal employees to areas impacted by Hurricane Katrina.

## Background

The Department of Veterans Affairs (VA) transferred Marilyn B. Lamboi to its medical center in Jackson, Mississippi, in 2005. In so doing, the VA authorized her to receive temporary quarters subsistence expenses (TQSE), computed under the actual expense method, for a period of seventy-five days.

As directed in her orders, Ms. Lamboi reported to Jackson on October 1. Slightly more than a month earlier, on August 28, Hurricane Katrina had devastated the Gulf Coast and the President had declared that an emergency existed in the State of Mississippi. By the time Ms. Lamboi arrived in Jackson, hotels in the area were fully occupied and their proprietors were unwilling to grant the government rate to federal employees who wished to stay there. The government rate for Jackson at that time was the standard rate for travelers to locations in the continental United States (CONUS), \$60 per day for lodging (plus \$31 per

day for meals and incidental expenses). Ms. Lamboi paid \$70 per day (\$78.45 including tax) to rent a hotel room for each of the seventy-four days she lived in temporary quarters in Jackson.

Ms. Lamboi asked the VA to reimburse her for the difference in cost between the amount she paid and the standard government rate. The agency declined to do so. The employee asks us to review that determination.

### Discussion

GSA Bulletin FTR 05-06 was issued on September 2, 2005.

[It] informs agencies that certain provisions of the FTR governing the authorization of actual subsistence expenses for official travel (both TDY [temporary duty] and relocation) are temporarily waived as a result of Hurricane Katrina, because it is expected that finding lodging facilities and/or adequate meals may be difficult, and distances involved may be great resulting in increased costs for per diem expenses.

*See* 70 Fed. Reg. 53,798 (Sept. 12, 2005).

For relocation travel, among the provisions of the FTR that were waived were –

Section 302-6.102[,] which limits the per diem reimbursement to the standard CONUS rate for TQSE. Agencies may authorize subsistence expenses at the locality per diem rate under the provisions of § 301-11.101 or as an actual expense reimbursement allowance under §§ 301-11.300 - 306.

The bulletin was originally in effect from the date of issuance through March 1, 2006. GSA Bulletin FTR 06-05, which was issued on January 31, 2006, extended this period through September 30, 2006.

Let us put the bulletin's impact into context. The FTR states that when an agency authorizes a transferred employee to receive reimbursement of TQSE by the actual expense method, the employee is entitled to be paid the actual TQSE incurred, provided that the expenses are reasonable and do not exceed the maximum allowable amount. The "maximum allowable amount" is the "maximum daily amount" multiplied by the number of days the employee incurs authorized TQSE. The "maximum daily amount" for a single employee within CONUS is the standard CONUS rate for each of the first thirty days in temporary quarters and three-quarters of that rate for each additional day. 41 CFR 302-6.100, -6.102

(2005). Section 302-6.102 – the provision that has been waived for travel affected by the hurricane – is the one that keys the “maximum daily amount” to the standard CONUS rate.

The other provisions noted in the part of the bulletin with which we are concerned address reimbursement to temporary duty travelers for costs of lodging and meals and incidental expenses. This reimbursement is generally effected under one of two payment methods, lodgings-plus per diem (*see* 41 CFR 301-11.101) or actual expenses (*see* 41 CFR 301-11.300 to -11.306). The bulletin directs agencies to establish, for TQSE payments to transferred employees affected by the hurricane, a different maximum daily amount from the standard CONUS rate for the first thirty days in temporary quarters and three-quarters of that rate for additional days. The rate to be used is one permitted for temporary duty travelers – either the per diem rate for the locality in question under the lodgings-plus per diem method or the actual expenses incurred by the employee, subject to regulatory restrictions.

The VA’s Travel Policy Division issued Travel Notice 05-02 to inform VA offices about the contents of GSA Bulletin FTR 05-06. The travel notice states, “VA offices should ensure that all allowable costs are reimbursed properly and in accordance with the waiver of regulations.” Although the travel notice garbles some of the provisions of the GSA bulletin and badly misstates others, it reports accurately that among the waived regulations pertaining to relocated employees is “41 CFR 302-6.102 limiting per diem to the standard CONUS rate for temporary quarters; reimbursement may be approved based upon the actual expenses incurred or the GSA per diem rate for the locality of the temporary quarters.”

When Ms. Lamboi asked the VA to apply the provisions of the GSA bulletin and the VA travel notice to her situation, the agency did not contest her statement that hotel rooms in Jackson, Mississippi, could not be rented at the government rate during the fall of 2005 due to the impact of Hurricane Katrina. The agency instead used the following rationale to reject her claim: The GSA per diem rate for Jackson was the same as the standard CONUS rate when she was in temporary quarters in that city, so using the per diem rate for Jackson instead of the standard CONUS rate would have no effect on the amount the VA could reimburse this employee. Secretary of Veterans Affairs Anthony J. Principi had signed a memorandum which states, “Actual expense may not be approved for travel related to permanent change of station travel including en route travel, travel related to a househunting trip, or temporary quarters subsistence allowance (41 CFR 302-4.200, 302-5.13 and 302-6.102).” Reimbursing Ms. Lamboi for TQSE based on her actual expenses would contravene Secretary Principi’s directive, so it could not be permitted, either.

We agree with the VA that because the per diem rate for Jackson was the same as the standard CONUS rate, using the former instead of the latter would not increase the amount of TQSE which Ms. Lamboi could receive. We do not believe that Secretary Principi’s memorandum can be read as a limitation on the agency’s ability to use Ms. Lamboi’s actual

expenses as a cap on her recovery of TQSE, however. The secretary's memorandum must have been issued no later than January 2005, for he resigned his post in that month. The memorandum was applicable to normal situations and specifically referenced section 302-6.102 of the FTR as authority. GSA Bulletin FTR 05-06, which addresses the extraordinary situation of Hurricane Katrina and was promulgated after Secretary Principi left office, waives the very provision on which his memorandum relied.

### Decision

Because the VA's action in applying the GSA bulletin was based on an unsound basis, it cannot stand. The bulletin requires each agency to decide, for transferred employees in the area and time affected by Hurricane Katrina, whether the maximum daily amount of TQSE they may receive is the locality per diem rate or the actual expenses incurred (subject to regulatory limitations). Ms. Lamboi was a transferred employee in the area and time affected by the hurricane. The VA must therefore reconsider whether to set, as the maximum daily amount of TQSE she and similarly-situated employees may receive, the locality per diem rate or the actual expenses incurred. Notwithstanding Secretary Principi's inapplicable memorandum, the agency may choose the latter option. If it does so, it shall recalculate Ms. Lamboi's TQSE reimbursement accordingly.

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STEPHEN M. DANIELS  
Board Judge