# Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

---

April 27, 2005

---

GSBCA 16566-RELO

In the Matter of STACEY D. WILLIAMS-KLEINERT

Stacey D. Williams-Kleinert, Arlington, VA, Claimant.

Rick Miller, Civilian Travel and Overseas Allowances, Compensation and Legislation Division, Office of the Chief of Staff, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

**HYATT**, Board Judge.

Claimant, Stacey D. Williams-Kleinert, a civilian employee of the United States Air Force, was transferred from Germany to Virginia in September 2004. One of the relocation benefits authorized by the Air Force in connection with her permanent change of station was temporary quarters subsistence expenses (TQSE), which is the subject of her claim.

When claimant arrived in Virginia to report to her new duty station, she elected to stay temporarily at a nearby apartment in Rosslyn that had been recommended by her new command. For the period from September 17 through November 8, 2004, when claimant occupied temporary quarters, her expenses came to $9508.60. She was reimbursed $4295.16, resulting in out-of-pocket expenses of $5213.44.

Claimant's principal complaint about her relocation is that she was not well counseled with respect to her entitlements. Ms. Williams-Kleinert states that prior to her departure

from Germany, when she was advised about the relocation process, she was asked only two questions concerning TQSE -- how long she needed it for and whether her dependents would accompany her at the time she occupied TQSE. She believes that she was not adequately apprised of the difference between fixed rate and actual expense rate TQSE. Her orders did not specify the type of TQSE authorized, so when she arrived in Virginia, the gaining office assumed that her preference was for actual expense reimbursement, based on the fact that sixty days were authorized.

After she started submitting vouchers, and realized that the reimbursement level was much lower than the expenses she had incurred, Ms. Williams-Kleinert sought advice from her gaining office. This office explained that she was being paid under the actual expense option for TQSE, based on the number of days authorized. The rate applicable to this TQSE option is based on the standard per diem rate for the continental United States (CONUS). That rate is lower than the locality per diem rate, which is the basis for calculating fixed-rate TQSE. Apparently, the locality per diem rate fixed rate was the rate relied upon by personnel in the losing office when they told her how much to expect in reimbursement.

In light of these circumstances, the finance office in Virginia recommended that Ms. Williams-Kleinert move to a facility where the expense would be within the per diem rate allowed for actual expense TQSE, such as billeting at Bolling Air Force Base. Ms. Williams-Kleinert looked into this possibility, but did not successfully locate a viable option. As a result, she incurred TQSE costs substantially in excess of what she was reimbursed. She believes that since her orders were improperly prepared and she was poorly advised as to her options for temporary quarters, she should be reimbursed the full costs that she incurred.

In response, the Air Force states that claimant was primarily advised by the Civilian Personnel Office at Ramstein Air Base in Germany prior to her relocation. This office prepared her travel orders and provided a list of documents for claimant to review and fill out prior to issuance of travel orders. Ms. Williams-Kleinert was asked to fill in a "request for orders" worksheet prior to the preparation of her change of station orders. A copy of this worksheet is provided by the Air Force. The worksheet asks the transferring employee to select the preferred TQSE option. There are two choices to select. One option is the actual expense method, under which the employee may receive up to sixty days of TQSE but must itemize expenses and submit receipts. The other option is the fixed rate method, under which the employee receives a flat rate lump sum, for no more than thirty days, and need not itemize expenses. The form explains that under the actual expense method, limited extensions of time are available and the employee's compensation is limited to the standard CONUS rate. If the fixed rate method is selected, the form notes that the employee receives seventy-five percent of the current per diem rate for the locality to which he or she is moving. The Air Force further notes in its response that employees are expected to familiarize themselves with the regulations governing relocations. It thus takes the position that regardless of any inadequacies in processing claimant's relocation and associated paper work, she is not eligible for any further benefits.

Although the form provided by the Air Force shows that claimant checked the actual expense election, Ms. Williams-Kleinert disputes this, stating that she did not choose an option and hers is not the only handwriting on the form. Further, the travel orders themselves do not specify what form of TQSE is authorized. Finally, Ms. Williams-Kleinert believes

that the agency's failure to advise her more specifically, and generally to afford her more assistance in making the move, should entitle her to be compensated for all of the expenses incurred.

## Discussion

When an agency, in the interest of the Government, transfers an employee from one permanent duty station to another, one of the relocation benefits that may be authorized is the reimbursement of subsistence expenses that the employee incurs while occupying temporary quarters. 5 U.S.C. § 5724a(a)(3) (2000). Under the Federal Travel Regulation (FTR), as supplemented by the Joint Travel Regulations (JTR) for civilian employees of the Defense Department, when an agency decides to reimburse an employee for TQSE, it may give the employee the option of being reimbursed in accordance with either the fixed amount method or the actual expense method. 41 CFR pt. 302-6 (2004); JTR C13110 (Sept. 2004). The fixed amount method provides the employee with a fixed amount for up to thirty days, regardless of the employee's actual expenses. If TQSE is reimbursed according to the fixed amount method, the agency is prohibited from making any extensions to the TQSE period and the employee will receive no additional reimbursement if the fixed amount does not cover his or her TQSE. 41 CFR 302-6.11, .200, .202, .304. The actual expense method provides an employee with reimbursement for his or her actual expenses, within certain limits, for up to sixty days -- a period which may be extended, at the agency's discretion, for up to an additional sixty days. *See generally Jeffrey D. Vance*, GSBCA 16016-RELO, 03-2 BCA ¶ 32,317; *Marilyn A. Robinson*, GSBCA 15902-RELO, 03-1 BCA ¶ 32,230.

Claimant's travel orders authorized TQSE and stated that sixty days were authorized. Based on this, the gaining office reasoned that Ms. Williams-Kleinert had been authorized TQSE under the actual expense method. Claimant maintains that she cannot be considered to have made an election because her choices were never properly explained to her. She disputes ever having checked the box on the worksheet form to indicate a preference.

The issue here is whether claimant made an election of a particular TQSE method given that her travel orders authorized sixty days of TQSE, which is in fact inconsistent with the fixed amount TQSE option. Regardless of whether claimant selected a specific method of TQSE, she was in fact provided the opportunity to make an election on the worksheet that she filled out. That worksheet explained both methods of TQSE and offered her the opportunity to choose the one she preferred. Whether she checked a specific box or not is moot at this point. The Air Force apparently understood her to prefer the actual expense method and her actions, by occupying temporary quarters for longer than thirty days, suggest that this was a mutual understanding. Although claimant apparently did not realize that she was being asked to select one method or the other, she was given a choice and did not make a clear election of the fixed rate method. At this point it is too late to unscramble the egg, and allow claimant to make an after-the-fact election. Further, there is no authority whatsoever for permitting her to be paid at the higher daily rate for the full number of days that she occupied temporary quarters.

Under these circumstances, there is no remedy we can afford Ms. Williams-Kleinert that is consonant with the statutory and regulatory scheme. As the Air Force points out, even if the losing office misstated the rates that would be paid for TQSE, and could have done a

better job of acquainting claimant with the extent of her benefits, there is no authority under which the agency or the Board can increase the amount of the benefits available to claimant for occupancy of temporary quarters incident to a relocation on the basis that an agency may have provided erroneous or ambiguous advice concerning available benefits. *E.g.*, *Damon Wayne Lunsford*, GSBCA 16352-RELO, 04-2 BCA ¶ 32,680.

## Decision

The claim is denied.

_____
CATHERINE B. HYATT
Board Judge