

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 23, 2006

GSBCA 16793-RELO

In the Matter of DIANE F. STALLINGS

Diane F. Stallings, Fort McPherson, GA, Claimant.

Cheryl A. Smith, Regional Counsel, Installation Management Agency, Department of the Army, Fort McPherson, GA, appearing for Department of Defense.

DeGRAFF, Board Judge.

In March 2005, the Department of Defense (DoD) transferred Diane F. Stallings from one permanent duty station to another. In connection with the transfer, DoD authorized Ms. Stallings to incur reimbursable temporary quarters subsistence expenses (TQSE). Her travel authorization identified two methods, the fixed method and the actual expense method, for reimbursing TQSE and said Ms. Stallings would be reimbursed according to the actual expense method.

After Ms. Stallings transferred, she asked DoD to amend her travel authorization retroactively to allow her to be reimbursed for TQSE according to the fixed method. DoD asks us for an advance decision pursuant to 31 U.S.C. § 3529 (2000), regarding whether it may amend Ms. Stallings's travel authorization.

Discussion

As DoD points out in its submission to us, as a general rule, an agency may not retroactively change a travel authorization. An exception to this rule exists, however, if there is an error on the face of a travel authorization or if all the facts and circumstances

surrounding the issuance of an authorization clearly demonstrate that some provision which was previously determined and definitely intended to be included was omitted through error or inadvertence in preparing the authorization. *Joel Williams*, GSBCA 16437-RELO, 04-2 BCA ¶ 32,769. In order to determine whether Ms. Stallings's travel authorization contains an error or an inadvertent omission, we look at the regulations applicable to TQSE and the facts surrounding the issuance of her authorization.

The Federal Travel Regulation (FTR), which applies to all federal civilian employees, and the Joint Travel Regulations (JTR), which apply to civilian employees of DoD, explain that TQSE reimbursement is discretionary. That is, it is up to the agency to decide whether to reimburse such expenses. 41 CFR 302-6.6 (2005); JTR C13200.¹ Employees reimbursed according to the actual expense method are reimbursed for their actual expenses, not to exceed the amount of the standard per diem rate paid in the continental United States for the first thirty days. After the first thirty days in temporary quarters, the maximum amount is reduced to a fixed percentage of the standard per diem rate. The maximum length of time for being reimbursed according to the actual expense method is 120 days. 41 CFR 302-6.100, -6.102, -6.104; JTR C13205, C13210, C13225. Employees reimbursed according to the fixed method receive a lump sum payment. The payment is equal to a fixed percentage of the per diem rate in effect at the new permanent duty station multiplied by the number of days for which TQSE is authorized, up to a maximum of thirty days. 41 CFR 302-6.200, -6.201; JTR C13300.

According to the FTR, an agency will reimburse its employees according to the actual expense method of reimbursement unless the agency permits reimbursement according to the fixed method. If the agency makes both methods available to an employee, the employee can choose between the two. 41 CFR 302-6.11. According to the JTR, the DoD authorizing official, not the employee, determines whether it is necessary to reimburse an employee for TQSE according to the actual expense method or according to the fixed method. JTR C13300, C13305. If the authorizing official decides to authorize reimbursement according to the fixed method, the employee may choose to be reimbursed by either the fixed method or the actual expense method. JTR C13300, C13305. If, however, the authorizing official decides to authorize reimbursement according to the actual expense method, the regulations do not allow the employee to choose between the two methods of reimbursement.

The travel authorization DoD prepared for Ms. Stallings does not contain an error on its face. The authorization showed DoD chose to authorize Ms. Stallings to be reimbursed

¹All citations are to the regulations in effect when Ms. Stallings reported for duty at her new duty station.

for TQSE according to the actual expense method of reimbursement. This choice was permitted by the regulations and was unambiguously set out in the travel authorization.

If the facts established that the authorizing official definitely intended to offer Ms. Stallings reimbursement according to the fixed method of reimbursement and did not do so due to inadvertence or error, DoD could retroactively amend her travel authorization. In her submission to us, Ms. Stallings says she believes the approving official wanted to offer her the fixed method of reimbursement. Although there are no facts to support Ms. Stallings's statement, DoD's submission to us shows it is willing to assist Ms. Stallings, provided it has the authority to do so. If DoD determines Ms. Stallings is correct, and if the approving official definitely intended to offer her the fixed method of reimbursement when he prepared her travel authorization and did not do so due to inadvertence or error, then DoD can retroactively amend her travel authorization.

As the facts have been developed to date, however, neither DoD nor Ms. Stallings has called to our attention any information which would support a conclusion that her travel authorization inadvertently omitted a provision which the authorizing official meant to include. So far as we can tell, the authorizing official decided to use the actual expense method of reimbursement and completed the travel authorization to reflect this decision. If DoD had authorized Ms. Stallings to be reimbursed according to the fixed method, it would have been required to allow her to choose between the two reimbursement methods. However, because DoD decided to authorize the actual expense method of reimbursement, Ms. Stallings did not have the option of choosing to be reimbursed by the fixed method. Presently, there is nothing to show DoD meant to authorize the fixed method of reimbursement when it issued Ms. Stallings's travel authorization, so there is no basis for retroactively amending the authorization.

MARTHA H. DeGRAFF
Board Judge