

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 3, 2005

GSBCA 16508-TRAV

In the Matter of NIDAVAN KANASAWADSE

Nidavan Kanasawadse, Bangkok, Thailand, Claimant.

Robert Hussey, Chief, Employee Claims Division, Charleston Financial Service Center, Department of State, North Charleston, SC, appearing for Department of State.

HYATT, Board Judge.

Claimant, Nidavan Kanasawadse, is a Foreign Service national employed by the Department of State in Bangkok, Thailand. In February 2003, she and several co-workers from her office performed temporary duty in New Delhi, India. Ms. Kanasawadse was the senior member from her office group.

Travel commenced on Sunday, February 23. The travel orders for all four employees authorized per diem at the level of \$190 per night for lodging and \$70 per day for meals and incidental expenses.

Upon arriving at the hotel in New Delhi, Ms. Kanasawadse was advised by the hotel desk clerk that for the rate of \$192.57 per night, she could stay in an upgraded room rather than in the small room reserved for her at \$100 per night. After considering this offer, she decided to accept it, reasoning that her temporary assignment in New Delhi was for twelve days, she expected to spend considerable amounts of time in the room after work hours, the upgraded room would be significantly more comfortable, and she would only incur a minimal personal expense above the authorized per diem rate. Her three co-workers apparently decided to accept the same offer from the hotel.

After her assignment was completed, claimant returned to Bangkok and sought to be reimbursed her out of pocket expenses. She submitted a voucher in May 2003. Two months later, in July 2003, she was told that her reimbursement for the lodging expense had been reduced from \$190 per night to \$100 per night because she should have stayed in the less

expensive room that had been reserved for her.¹ The certifying official explained that claimant had received an electronic mail message sent just prior to the travel, informing her of the \$100 room reservation, that the upgrade had not been approved in advance by the Bangkok Financial Service Center (BFSC), and that claimant had not provided any satisfactory justification for the upgrade. He further stated that travel expenses could be approved only to the extent considered "necessary and reasonable" and that the portion of her claim attributable to the upgraded room expense was not considered necessary or reasonable. His memorandum refers to chapter six of the Foreign Affairs Manual (FAM), paragraph 156.2-2.

Ms. Kanasawadse appealed the certifying officer's ruling within the State Department to the Employee Claims Branch. She pointed out that the cable confirming the \$100 room reservation was received after close of business on the Friday preceding the travel and noted that her travel authorization, issued just prior to the trip, reflected a \$190 lodging rate, rather than \$100. Ms. Kanasawadse notes that had she been apprised in advance that her lodging reimbursement would be limited to \$100 per night, rather than to \$190 per night, she would not have agreed to the upgrade. She further noted that the reduction of her claim was based on the provision of the FAM applicable to "Reimbursement of Actual Subsistence Expenses" and not on the provision pertinent to standard travel.

Claimant's formal appeal was denied by the Employee Claims Branch, which advised her she could appeal to the Board. The Director of the Office of Disbursing Oversight for the State Department supports payment of the claim under the circumstances, noting that the traveler should be paid and the originating office counseled to include any intended limitations on lodging expenses in travel orders issued in the future. Ms. Kanasawadse has appealed the certifying officer's decision, asking to be reimbursed the difference between the amount she was allowed and the amount of expense she incurred, a total of \$1080.

Discussion

The reimbursement of travel expenses of Foreign Service nationals traveling on temporary duty (TDY) outside the continental United States is regulated by chapter six of the State Department's FAM. Claimant's orders were issued under the uniform worldwide lodgings-plus per diem computation system established in 6 FAM 151.1, under which the employee receives a fixed allowance for meals and miscellaneous expenses and is reimbursed for the actual cost of lodging, not to exceed the maximum rate established by regulation for the particular TDY location. 6 FAM 152.2.

The FAM allows for a reduced maximum per diem rate under appropriate circumstances as determined in accordance with the Federal Travel Regulation's (FTR's)

¹ Claimant tells us that initially the certifying officer proposed to charge her for the additional costs incurred by the other three travelers because she was the senior Foreign Service national on the trip and may have unduly influenced the others to accept the upgrade. This was overruled at a higher level in the organization and claimant was never asked to pay for the additional costs incurred by her co-workers. In fact, the other three travelers were eventually reimbursed for the full amounts claimed.

provision 301-11.200, which is cross-referenced in FAM 153.1. FTR 301-11.200 permits an agency to reduce the maximum allowable per diem rate to an amount that is lower than the prescribed maximum when the agency has determined in advance that lodging and/or meal costs will be lower than the per diem rate. The lower authorized per diem rate, however, must be stated in the travel orders in advance of travel. 41 CFR 301-11.200 (2003).

The Board has recently resolved another travel claim that, for all intents and purposes, is on all fours with this one. In that case, a Foreign Service national employee of the American Embassy in Bangladesh traveled to New Delhi, India, for temporary duty. This employee stayed in the discounted \$100 room the first night of travel and thereafter, like Ms. Kanawadase, he upgraded from the \$100 per night room to one costing the maximum per diem lodging amount of \$190. The agency initially reduced his reimbursement to \$100 per night for lodging, reasoning that he had run afoul of the FAM's "prudent person rule." The Board rejected the agency's reasoning that the prudent person rule dictated that the traveler be limited to the cost of the discounted room. The Board noted that under the lodgings-plus system a traveler is ordinarily entitled to be paid for expenses within the assigned limits of that system. Absent an advance determination that a lower rate will be prescribed, and a concomitant entry on the travel orders limiting the lodging rate to the lower amount, the agency in essence is implementing an unauthorized reduction of the prescribed maximum after the fact. Arjumand Wohra Khan, GSBCA 16356-TRAV, 04-2 BCA ¶ 32,697.

The certifying official, in concluding that Ms. Kanasawadse's lodging expenses exceeded reasonable and necessary amounts, erroneously relied on 6 FAM 156.2, a provision addressing claims for payment of actual expenses in excess of the prescribed lodgings-plus maximum rates. This provision pertains to travel to localities where the actual subsistence expenses necessarily incurred by the employee are higher than the maximums under the prescribed per diem rates. In such cases, the employee may be paid for actual costs incurred in excess of the per diem rate so long as those costs are reasonable and necessary. This level of review is not applicable when the employee is seeking nothing more than the amount recognized to be within the range of expected expense at the locality where TDY is performed.

With respect to Ms. Kanasawadse's claim, her request for reimbursement does not exceed the maximum amount payable under the lodgings-plus system. Even if we were to conclude that the agency effectively determined that a reduced amount should be paid as reflected by the reservation of the \$100 per night room, it did not properly state this determination on Ms. Kanasawadse's travel orders. Under the applicable regulations and precedent, claimant is entitled to be reimbursed an additional \$1080 in connection with her travel.

CATHERINE B. HYATT
Board Judge