Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tita D. Corpuz and John R. Fears

File: B-256576

Date: January 17, 1996

DIGEST

1. Agency's determination that various charges incident to occupancy of temporary quarters are allowable is not arbitrary, capricious, or contrary to law. Hence two transferred employees who occupied temporary quarters in rented apartments may be reimbursed subsistence expenses incurred in renting temporary quarters, including rent, apartment application or administrative fees, the cost of transporting rental furniture into the temporary quarters, a final cleaning fee, a security alarm fee, and a police alarm permit. However, a telephone installation fee may not be reimbursed as a subsistence expense.

2. A transferred employee who entered into a 6-month apartment lease for temporary quarters occupancy had to pay a lease-breaking fee when he vacated the apartment after approximately 4 months. His lease-breaking fee may be reimbursed if the agency finds that it meets the standards applicable to other lodging expenses incurred by employees authorized to occupy temporary quarters. Patsy S. Ricard, 67 Comp. Gen. 285, 290 (1988); David E. Nowak, 65 Comp. Gen. 805 (1986); Alex Kale, 55 Comp. Gen. 779, 782-83 (1976); and Walter V. Smith, B-186435, Feb. 23, 1979, are overruled to the extent they are inconsistent with this decision.

DECISION

The Department of Veterans Affairs (VA) requests a decision concerning the entitlement of two employees to be reimbursed for certain lodging expenses each incurred while in temporary quarters.[1] As discussed below, some of the expenses claimed by each may be reimbursed.

Mrs. Tita D. Corpuz and Mr. John R. Fears are employees of the VA who were transferred to the VA Medical Center in Phoenix, Arizona, in March and May 1993,

[1]Mr. Danny J. Ford, Chief, Fiscal Service, Carl T. Hayden Medical Center, Phoenix, Arizona (Ref. 644/04).

respectively. Each was authorized subsistence expenses while occupying temporary quarters and each received extensions not to exceed 120 days. Also, each occupied a rented apartment with dependents as temporary quarters at the new station. The VA Medical Center disallowed certain lodging expenses claimed by each employee.

The items disallowed in Mrs. Corpuz's case were the costs of a telephone installation fee ($46.50), a security alarm fee ($37.95), a police alarm permit ($10.00), and an apartment application fee ($25.00). The expense items disallowed in Mr. Fears's case were a lease-breaking fee ($111.20), an apartment administrative fee ($115.00), a final cleaning charge ($30.00), and a delivery charge for rented furniture ($35.00).

VA Medical Center has submitted appeals on behalf of these two employees, and contends that the items should be reimbursed. Its concern is that all reasonable charges incident to rental lodging be allowable, so that if rental lodging is less expensive than a hotel or motel, it will be in the interest of both the employee and the government for the employee to use the lower cost lodging.

OPINION

The regulations governing payment of temporary quarters subsistence expenses (TQSE) are contained in chapter 302, Part 5 of the Federal Travel Regulation (FTR).[2] Section 302-5.4(a) of these regulations provides for reimbursement of actual subsistence expenses incurred that are incident to the occupancy of temporary quarters and are reasonable in amount. Among the expenses allowed are lodging expenses and "fees . . . incident to . . . lodging." In addition, FTR § 302-2.1 provides that, except as specifically provided in Chapter 302, per diem transportation costs, and other travel expenses of a transferred employee shall be allowed in accordance with 5 U.S.C. §§ 5701-5709 and Chapter 301 of the FTR (which deals with the allowable travel expenses of employees on temporary duty).

Generally, the costs of services that are allowable when an employee occupies temporary quarters are those ordinarily included in the price of a hotel or motel room, that being the usual form of temporary lodging.[3] These would include costs incident to rental and may include fees for cleaning and telephone services, trash

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[2]41 C.F.R. § 302, Part 5 (1993).

[3]David E. Nowak, 65 Comp. Gen. 805 (1986); Guy V. Padgett, B-244721, Dec. 17, 1991.

removal, and a cable television rental fee.[4] As this case illustrates, however, there are expenses associated with the rental of residences that ordinarily are not reflected in a hotel or motel bill. The "hotel/motel" standard, therefore, should not be applied as a rigid rule in determining what costs are incident to apartment rentals, but only as a guide to what is reasonable under the given circumstances. For example, the FTR includes among the expenses that may be allowed when an employee rents an apartment while on a temporary duty (TDY) assignment (and thus may be allowed as TQSE when an employee obtains temporary quarters in a rented apartment pursuant to a transfer) the rental cost of appropriate and necessary furniture and appliances; the cost of connection, use and disconnection of utilities; cost of reasonable maid fee and cleaning charges; and a monthly telephone fee. FTR § 301-7.14(a)(1).[5] While many of these would be included in the price of a hotel room, i.e., they are necessary costs of providing hotel services, there is ordinarily no connecting or disconnecting of utilities associated with a hotel stay.

We have in the past expressed a view about whether various charges incident to occupancy of temporary quarters may be reimbursed independent of the agency's own conclusion. However, we believe that a sounder decision-making process is for the initial determination of allowability to be made by the agency concerned, considering whether the type and amount of expenses claimed are usual for the geographic area. We will not disagree with such a determination unless it is arbitrary, capricious, or contrary to law. In this case, the VA argues that the claimed items "clearly meet the criteria of being reasonable and being incident to lodging." Except for the cost of telephone installation, we do not believe that the VA's conclusion is arbitrary or contrary to law.

We would not object if the agency allowed the fee charged Mrs. Corpuz for processing her apartment rental application and the substantially similar fee charged Mr. Fears. While such charges would not have been incurred if these employees had rented hotel rooms, the record indicates that such fees are commonly assessed in many areas, including the Phoenix, Arizona, area, regardless of the period of anticipated occupancy of those quarters. As such we believe they qualify as expenses incurred incident to the occupancy of temporary quarters.

Mr. Fears's claim for final cleaning is an expense incurred by the apartment management to prepare the apartment for the next occupant. Such cleaning is comparable to services provided by hotels and motels and ordinarily reflected in

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[4]Michael D. Duffy, B-168384, Feb. 19, 1975; Patrick T. Schluck, B-192723, Feb. 14, 1979.

[5]41 C.F.R. § 301-7.14(a)(1) (1993).

their room charges.[6] That charge may be included as part of his cost of lodging. Mr. Fears may also be allowed the cost of transporting rental furniture to his temporary quarters, even though this is not a cost typically reflected in hotel or motel charges. The cost of delivery is usually included as a part of the charge for furniture rental and as such is reimbursable. We do not think this charge should be treated differently merely because it was billed separately.

As to Mrs. Corpuz's claim for a security alarm fee and a police alarm permit, if the agency determines that it was reasonable for Mrs. Corpuz to incur these expenses in the interest of personal safety, these expense items may also be reimbursed as costs incurred incident to rental.

The FTR specifically provides that telephone installation charges may not be reimbursed when an employee rents an apartment while on temporary duty. 41 C.F.R. § 301-7.14(a)(1). Similarly, we have previously concluded that telephone installation charges, as claimed by Ms. Corpuz, are not allowable as TQSE.[7] While the regulation does not strictly apply to TQSE, in light of our prior decisions, we believe that GSA and other agencies believe that the TDY rule is applicable to TQSE. Until the regulation is changed, we believe the better rule is for telephone installation charges to be not reimbursable.

Finally, on the question of the lease termination fee, Mr. Fears contends that he had the choice of signing a 6-month lease or paying a much higher rent charge for month-to-month occupancy and that he chose the former to save money. Since Mr. Fears assumed that he was going to be in temporary quarters for 4 months, he believed that it was less expensive to sign the 6-month lease, even though he knew that he might have to break it. He argues that, under these circumstances, the lease termination fee of $111.20 should be deemed a cost incident to lodging.

We have generally considered forfeited rental deposits and re-letting fees paid on the premature settlement of unexpired leases not to be "subsistence expenses" and, therefore, not reimbursable as "actual subsistence expenses" incurred incident to occupancy of temporary quarters at a new duty station. Patsy S. Ricard, 67 Comp. Gen. 285, 290 (1988); David E. Nowak, supra; Alex Kale, 55 Comp. Gen. 779, 782-83 (1976); Walter V. Smith, B-186435, Feb. 23, 1979. On the other hand, in a decision involving a similar expense incurred on extended temporary duty (TDY), we held that a security deposit forfeited when an employee terminated a 6-month lease after approximately 4 months of occupancy could be reimbursed, even though the employee knew that his temporary duty assignment was due to end before the lease

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[6]Mike R. Suba, B-247711, Sept. 8, 1992, citing to Michael D. Duffy, footnote 4, supra.

[7]Guy V. Padgett, B-244721, Dec. 17, 1991.

period would expire. We allowed the expense because the security deposit was necessary to obtain a lodging rate substantially less than the daily rates for a hotel or motel room and the employee's lodging arrangements were reasonable and prudent and resulted in a cost advantage for the government. Stuart Weisberg, B-192026, Oct. 11, 1978. Similarly, we have held that an employee who rented lodgings at a reduced 30-day rate could be reimbursed the entire cost, although he was on temporary duty only 22 days, since the 30-day rental resulted in a cost advantage compared to the higher cost for 22 days at a daily rate. Willard R. Gillette, B-183341, May 13, 1975.

Although we have characterized forfeited rental deposits as "security deposits" rather than "subsistence expenses," the FTR defines allowable temporary quarters subsistence expenses to include fees incident to lodging. 41 C.F.R. § 302-5.4(a). We believe that the argument presented by the claimant here is correct: a lease termination charge is an actual lodging expense, whether paid through forfeiture of a deposit or otherwise. Agencies may reimburse such charges if they meet the standards applicable to any other lodging expenses incurred by employees authorized to occupy temporary quarters.

To summarize, the VA may reimburse Mr. Fears the final cleaning charge, apartment administrative fee, rental furniture delivery charge, and the lease termination expense, if otherwise appropriate. Similarly, Mrs. Corpuz may be reimbursed the apartment application fee, the security alarm fee, and the cost of the police alarm permit, provided the agency finds that such expenses were reasonably incurred in the interests of personal safety. However, Mrs. Corpuz may not be reimbursed the telephone installation charge. Finally, for both employees, the expenses are to be prorated over the period of temporary occupancy and such additional amounts when added to the daily amounts already paid may not exceed the maximum daily reimbursement authorized for transfers in the continental United States under section 302-5.4(c)(2)-(4) of the FTR.[8] Because lease termination charges were previously held not to be reimbursable in Patsy S. Ricard, supra; David E. Nowak, supra; Alex Kale, supra; and Walter V. Smith, supra, those cases are overruled to the extent they are inconsistent with this decision.

/s/Seymour Efros
for Comptroller General
of the United States

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[8]41 C.F.R. § 302-5.4(c)(2)-(4) (1993).