



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 3, 2007

CBCA 828-TRAV

In the Matter of FRANK A. CONFORTI

Frank A. Conforti, Arlington, VA, Claimant.

Alton E. Woods and Emily E. Parkhurst, Officer of the Solicitor, Department of the Interior, Washington, DC, appearing for Department of the Interior.

FENNESSY, Board Judge.

Frank A. Conforti, a retired lawyer of the Department of the Interior (DOI), seeks review of DOI's denial of his claim of \$1071.65 in local travel transportation expenses for the use of a privately owned vehicle (POV). The expenses were incurred between January 8 and March 27, 2007, for driving between his residence in Arlington, Virginia, and his work place in Herndon, Virginia. The agency denied the claim upon the ground that a federal employee must bear as a personal expense the cost of commuting between his residence and his official duty station. For the reasons discussed below, DOI correctly denied the claim.

Background

Mr. Conforti was assigned to Interior's Division of Mineral Resources, Office of the Solicitor, located at 1849 C Street N.W., Washington, D.C. (main Interior building). Commencing on January 8, 2007, until his retirement on March 31, 2007, Mr. Conforti worked at DOI's Mineral Management Service located at 381 Eldon Street, Herndon, Virginia (the Herndon office). The Mineral Management Service is a client of the Office of the Solicitor. DOI did not document this as a relocation of Mr. Conforti's duty station.

At all relevant times, Mr. Conforti's residence was in Arlington, Virginia. Mr. Conforti's commute from his residence to the main Interior building was 3.5 miles, according to MapQuest.com. Mr. Conforti stated on his vouchers that his commute from his residence to the Herndon office was 21.5 miles and that the main Interior building was twenty-two miles from the Herndon office.

Mr. Conforti drove his POV to and from the Herndon office. A few days prior to his retirement, Mr. Conforti went to the main Interior building to process his retirement papers and to submit his vouchers for reimbursement of the \$1071.65 in transportation expenses at a per-mile rate from January 8 through March 27, 2007. The agency denied Mr. Conforti's claim because it was either a nonreimbursable commuting expense or a nonreimbursable TDY "per diem" expense for travel to a location within fifty miles of Mr. Conforti's official duty station and residence.

Mr. Conforti contends that his supervisor directed the change of his work location from Washington to Herndon and that direction constituted a temporary duty (TDY) assignment for which he is entitled to be reimbursed local transportation expenses.

The agency states that the location change was by mutual agreement. The agency considers Mr. Conforti's relocation to Herndon to have been a change of his permanent duty station because he would be performing the same duties at Herndon as he performed at the main Interior building in Washington, D.C., and there were no plans for Mr. Conforti to return to the main Interior building.

Discussion

Pursuant to statute and the Federal Travel Regulation (FTR), when an agency authorizes an employee to travel on official government business using a POV, the employing agency must pay the employee transportation costs, including local transportation costs, at a per-mile rate. 5 U.S.C. § 5704 (2000); 41 CFR 301-2.2, -10.1, -10.300 (2006).

DOI's local travel instructions, contained in its Departmental Manual (DM), provide that, if DOI approves the use of a POV for local travel for official purposes, an employee will be reimbursed for miles driven, tolls, and parking fees. 347 DM 201-2. Also, if DOI authorizes an employee to use his POV to travel to an alternate work site near his duty station, DOI will reimburse the employee for the additional costs incurred for additional miles driven plus increased tolls and parking fees incurred. *Id.* 201-5. However, DOI's local travel instructions provide that, if an employee's "office/duty point" is relocated, commuting costs from the employee's residence to the new duty location are not reimbursable. *Id.* 201-12.

Did the assignment of Mr. Conforti to the Herndon office constitute a relocation of his office or duty station? An agency has discretion to determine how to treat an assignment, i.e., a permanent change of duty station or a temporary duty assignment. *Rodney C. Lowe*, GSBCA 13850-RELO, 97-1 BCA ¶ 28,962. Whether assignment to a particular station is temporary or permanent is a question of fact to be determined from the orders directing the assignment, the duration of the assignment, and the nature of the duties performed. *Id.* Another factor to consider is the location where an employee expects, and is expected, to spend the greater part of his time. The agency's records are not conclusive proof of an employee's permanent duty station. *James D. Fenwood*, GSBCA 15104-RELO, 00-1 BCA ¶ 30,658 (1999).

As there were no written orders assigning Mr. Conforti to the Herndon office, we determine from the surrounding circumstances whether his transfer was a relocation of his official station.

The FTR defines "official station" as an employee's permanent work assignment. DOI considers the transfer of Mr. Conforti to Herndon to have been a permanent change of official station because it was expected that Mr. Conforti would work there, permanently, performing the same duties he performed at the main Interior building, until his impending retirement. There is no evidence or allegation that either party expected Mr. Conforti to return to work at the main Interior building prior to his retirement or that he performed any duties at the main Interior building from January 7, 2007, until his retirement. During that period he went to main Interior only once, a few days before the effective date of his retirement, to process his retirement papers and to submit his transportation claim. Under these circumstances, DOI reasonably treated the transfer of Mr. Conforti to Herndon as a permanent change of duty station.

It is well settled that an employee who is engaged in commuting between his or her residence and official duty station is performing personal business, not official business, for the Government, and the employing agency will not pay the transportation costs that the employee incurs while commuting. *Freddie G. Fenton*, GSBCA 13638-TRAV, 97-1 BCA ¶ 28,712 (1996). DOI's local travel instructions are faithful to this rule. Because the expenses claimed by Mr. Conforti constitute commuting costs between his home and his official station, the agency properly denied the claim.

Decision

The agency's decision is affirmed.

EILEEN P. FENNESSY
Board Judge