



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 10, 2009

CBCA 1394-TRAV

In the Matter of DONALD D. REESE

Donald D. Reese, Plano, TX, Claimant.

Kenneth T. Rye, Office of the General Counsel, Department of the Navy, Norfolk, VA, appearing for Department of the Navy.

POLLACK, Board Judge.

Mr. Donald D. Reese contends that he is entitled to temporary duty (TDY) payment for 135 days of the time he spent in Bremerton, Washington, and not the temporary change of station (TCS) payment that he ultimately received.

The statement of claim he has filed shows that TDY orders were approved by his travel approving officer on October 18, 2007, and that they called for TDY payment for up to 135 days. He was being sent from a facility in the Virginia Beach, Virginia, area to Bremerton to perform overhaul work on a submarine tender. How long the repair would take at Bremerton was uncertain. With the TDY order in hand, he left the Virginia Beach area on or about October 25, 2007, with his final destination being Bremerton.

As he acknowledges in his claim submission, on the day after he left, while in transit (near Texas), he received a telephone call from a Navy official stating that the Navy planned to cancel his TDY orders and issue TCS orders and further telling him that he should return to Virginia Beach. Mr Reese apparently expressed disagreement and ultimately went on to Bremerton (stopping along the way on approved leave). The Navy rescinded the TDY orders on the basis that the Navy had incorrectly issued them and that the Navy should have issued TCS orders, given that the assignment was expected to last between six and thirty

months. On or about November 13, 2007, the Navy issued TCS orders to Mr. Reese. Ultimately, Mr. Reese submitted the paperwork for TCS reimbursement, an action which he says he did under duress.

Mr. Reese was paid for the costs he incurred during transit during the nine-day period from October 25 to November 2, 2007. The nine days were established based upon his new duty station being 3011 miles from Virginia Beach and dividing that by a 350 mile-a-day travel rate. For that time frame, he was entitled to per diem for both himself and his spouse, mileage, and a miscellaneous expense item associated with reserving a recreational vehicle site.

What Mr. Reese has presented here is essentially a claim where he asks the Board to decide the propriety of the Navy rescinding his initial order under TDY and issuing an order calling for TCS. Mr. Reese does not claim any illegality on the part of the Navy in making that choice, but rather appears to argue that the Navy had the discretion to retain the TDY status and should have so acted. It is not our charge to substitute our judgment for discretionary decisions of an agency as to an employee's duty status, unless the decision is arbitrary or capricious, or contrary to statute or regulation. Here, we know of no legal prohibition to the Navy using the TCS status, rather than TDY, in the circumstances surrounding Mr. Reese's move. The Navy has provided reasons for why it made the choice it did. We need not go into those considerations, as such an analysis would not change the fact that we have been provided no basis to find the change illegal or improper.

In his submission, Mr. Reese contends that prior to his accepting the position which triggered the move to Bremerton, he and Navy officials agreed to certain conditions for his proceeding to work at Bremerton. Among those were the following: TDY orders would not exceed 135 days; he and his wife would drive their motor home (their residence in Virginia) to Bremerton to use as lodging, understanding that travel and lodging via motor home was covered under the Defense Department's Joint Travel Regulations; and finally, at the end of the 135-day TDY period a determination would be made concerning the type of change of station orders that would be issued in Bremerton, as it was possible that a billet would be provided to him at that location. To the extent that Mr. Reese's claim is one for actual damages due to reliance on the above or the Navy's initial notification to him that he could proceed on TDY, Mr. Reese has not provided us with data which would support identifiable actual damages. That is particularly so, given that he was notified almost immediately after departing Virginia Beach of the Navy's decision to use TCS and rescind the TDY designation. Additionally, he was requested to return to Virginia Beach. While appropriate costs incurred due to an authorized TDY status would be payable, Mr. Reese has not shown us any authorized TDY payment which he has been denied.

We do note that the Navy has acknowledged that it may owe Mr. Reese for some lodging costs he incurred at an RV park. The Navy has explained that Mr. Reese had provided a receipt for \$153 from the Spring Creek Village MHP and RV in Plano, Texas, dated October 26, 2007. The Navy notes that the receipt might cover the five-day period from October 26 to November 1, 2007 (within the nine days allowed for TDY), but points out that the specific lodging dates are not listed on the receipt. The Navy states if the receipt covers lodging, then it would not contest paying Mr. Reese for that. Mr. Reese needs to clarify that matter for the Navy. If he provides the Navy with a statement that the \$153 covered lodging at Spring Creek during the October 26 to November 1, 2007, period, the Navy should pay him the \$153.

Finally, Mr. Reese seeks relief on the basis that other engineers assigned to the facility were treated differently than he was as to the assignment of TCS rather than TDY. The Navy has provided an explanation citing differences between the situations of those individuals and Mr. Reese. To the extent the claimed disparate treatment may provide a basis for some type of action, it involves personnel decisions and not travel entitlement. Accordingly, the Board is not the forum for such matters.

Decision

The claim is denied, other than as to those amounts that the Navy finds are due regarding the stay in Plano, Texas.

HOWARD A. POLLACK
Board Judge