



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 16, 2011

CBCA 2193-TRAV

In the Matter of DAVID R. FERGUSON

David R. Ferguson, Ellicott City, MD, Claimant.

Jennifer A. Strazza, Office of Associate General Counsel, National Security Agency, Fort George G. Meade, MD, appearing for Department of Defense.

HYATT, Board Judge.

Claimant, David R. Ferguson, has requested the Board's review of the decision of the National Security Agency (NSA) to deny reimbursement for travel expenses he incurred in connection with a temporary duty (TDY) assignment at the United States Army Command and General Staff College (CGSC) at Fort Leavenworth, Kansas.

Background

Mr. Ferguson was selected by NSA's Associate Directorate for Corporate Leadership to attend the School of Advanced Military Studies (SAMS) at the CGSC, as the NSA civilian participant. CGSC provides graduate-level education for Army majors as well as for students from the Air Force, Navy, and Marines, along with civilian government personnel and foreign military officers. The program in which Mr. Ferguson was enrolled was for eleven months and his report date was June 14, 2010.

Shortly before he left for training, claimant visited his doctor for a checkup. His physician referred him to several other doctors, who ordered various tests. At that time, claimant was told that he would need an additional test, which he was not able to schedule before departing for the TDY assignment.

Claimant drove from his permanent duty station (PDS) in Maryland to Fort Leavenworth. Once he arrived, Mr. Ferguson met with his instructors and, after obtaining more information about the curriculum and class schedule, he realized he would have to miss some classes to find doctors and undergo laboratory tests. He also began to experience symptoms of a new physical problem. He decided that it was not a good time to take the training. He contacted his office at Fort Meade, and personnel at the college, and apprised them of his concerns about his health status and the need for periodic medical checkups, which he thought would be incompatible with the rigorous nature of the program. Claimant then drove back to Maryland.

Mr. Ferguson explained his situation more fully in an email message to NSA. He offered two reasons for his decision to discontinue the training. First, he had not fully understood what the program entailed when he accepted the assignment. When he learned more about it, he concluded that it was not a good fit for him. Second, he believed that his medical circumstances presented an obstacle to continuing in the program, because of the need to locate suitable physicians in Kansas City and to schedule follow-up doctor visits and laboratory work, including the need for blood tests every three months. In addition, claimant's insurance plan would not cover medical expenses incurred in the Kansas City area.

Mr. Ferguson states that since returning to his PDS, he has seen three doctors and a surgeon and undergone numerous medical tests. He continues to see doctors on a quarterly basis. Mr. Ferguson considers that the logistics of setting up repeated doctor visits and tests while taking classes was unworkable and that these circumstances should thus qualify him for reimbursement of his travel expenses incurred prior to his departure from Kansas City.

Mr. Ferguson submitted a voucher for his travel expenses prior to abandonment of the mission. His expenses included mileage to Kansas City in the amount of \$557.25 and hotel and per diem in Kansas City for the amount of \$1184. NSA disallowed the claim.

Discussion

Agencies have no authority to reimburse the expenses of travel and per diem of an employee who fails to complete a temporary duty assignment for personal reasons. See *Robert T. Matsui*, B-198167 (Feb. 12, 1981); *Calvin A. Ehly*, B-192718 (Mar. 14, 1979); 47 Comp. Gen. 59 (1967); 41 Comp. Gen. 573 (1962). This rule is reflected in Joint Travel Regulations (JTR) C4420-C, which states as follows:

The employee is responsible for carrying out the mission for which travel is undertaken. An employee who does not report

to the TDY location, or who, upon arrival there, refuses to perform the mission or resigns, is financially liable to the [Government] for the [Government]-paid TDY travel and transportation allowances.

The statutory provisions governing reimbursement of employees' expenses of official travel provide an exception for circumstances involving an incapacitating illness or injury of the employee, or personal emergency, involving illness, incapacitation, or death of a family member, or other emergency situation such as a fire, flood, or other act of God. 5 U.S.C. § 5702(b)(1) (2006). If an exception is applicable, the agency may approve reimbursement of certain expenses. *Id.* § 5702(b)(2).

These provisions are implemented in the Federal Travel Regulation (FTR), at 41 CFR 301-30 (2009), and in various JTR provisions. JTR C4470, which is cited by claimant, provides as follows:

Except as in Ch[apter] 7, Part H, if an employee abandons travel for acceptable personal reasons (e.g., illness in the family or similar circumstances) before reporting to or completing a TDY assignment, only travel and transportation allowances to the abandonment point are allowable. Costs relating to the employee's return to the PDS are the employee's financial responsibility unless the employee completed the TDY mission.

NSA points out that JTR C4470 does not apply to claimant's situation, which is covered by chapter 7, part H of the JTR. Under JTR C7350, travel and transportation expenses may be allowed when an employee discontinues or interrupts a TDY travel assignment before completion as a consequence of an incapacitating illness or injury or a personal emergency situation. The term "incapacitating illness or injury" is defined in JTR C7365-C:

For purposes of this Part, an "incapacitating illness or injury" is one that occurs suddenly for reasons other than the employee's own misconduct and renders the employee incapable of continuing, either temporarily or permanently, the travel assignment.

It is within the agency's discretion to determine whether claimant's reasons for abandoning his temporary duty assignment fell within the parameters of the pertinent regulation. When a regulation calls for the exercise of discretion by an agency, the agency's

determination will not be overturned in the absence of abuse of that discretion. *See, e.g., Judith A. Sukol*, CBCA 2092-RELO, 10-2 BCA ¶ 34,574; *Benjamin A. Hanfelder*, CBCA 1294-RELO, 08-2 BCA ¶ 33,987. An exercise of discretion is valid if there is a reasonable basis for the decision made. *See, e.g., Donovan L. May*, CBCA 2188-TRAV (Jan. 7, 2011) (citing *Arthur Hubbard*, CBCA 1932-RELO, 10-2 BCA ¶ 34,540 and *Jeanne Hehr*, GSBCA16936-RELO, 06-2 BCA ¶ 33,431); *Paula A. Shimata*, CBCA 1135-RELO, 08-2 BCA ¶ 33,901.

In this case, NSA considered Mr. Ferguson's statements about his personal health in conjunction with his acknowledgment that after learning more about it he did not think the course was a good fit for him. In its response to the claim, NSA points out that the personal health information provided by claimant does not meet the definition of an incapacitating illness. The agency evaluated this information and concluded that the need to schedule periodic medical appointments and tests during out-of-town training may have been inconvenient for claimant, but did not amount to incapacitation as that term is used in the regulation. After returning to his permanent duty station, Mr. Ferguson continued to be able to work. As such, NSA takes the position that the regulation does not apply to claimant's circumstances and he is not eligible to be reimbursed for his travel and per diem expenses. Claimant has produced no evidence to show that the agency's conclusion that he was not incapacitated within the meaning of the regulation is an abuse of its discretion.

Decision

The agency's decision is sustained. The claim is denied.

CATHERINE B. HYATT
Board Judge