



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 28, 2012

CBCA 2508-RELO

In the Matter of JAMES A. CAUGHIE

James A. Caughie, APO Area Europe, Claimant.

Sheila Melton, Director, Travel Functional Area, Standards and Compliance, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

VERGILIO, Board Judge.

The claimant seeks reimbursement of educational travel expenses for each of his two stepdaughters. Each was a full-time student at a university, an unmarried dependent of the claimant, under twenty-one years of age at the time the claimant sought authorization, and under twenty-three years of age at the time of travel. Although the agency did not authorize the educational travel, the agency has provided only improperly based rationales for denying the authorization and approval, and has offered only information that suggests that under the actual circumstances the requested authorization would have been granted. However, the agency, not the Board, makes the initial discretionary determination on authorization/approval. The claimant does not receive monetary reimbursement for use of airline miles; the claimant did not spend any money for the redemption of miles.

James A. Caughie (claimant), a civilian employee of the United States Army, was posted outside the continental United States following a permanent change of duty station. On October 1, 2009, the claimant signed a transportation agreement for an additional two-year tour. On March 25, 2010, the claimant married. Thereafter, his wife and her two sons (his stepsons) were included on the claimant's orders for renewal agreement travel; the claimant's two stepdaughters were not included on the travel orders dated April 9, 2010, because they could not reside at the permanent duty station and each was a full-time student at a university in the United States. At the time the renewal agreement travel commenced, each student was under age twenty-one. The claimant sought authorization for educational

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travel for each student over the winter break beginning in December 2010. Each full-time student was under age twenty-three at the time of travel. The agency did not authorize the educational travel request because it concluded that the students, who were not residing at the permanent duty station, were not family members under applicable regulations.

Statute permits an agency to provide an employee in a foreign area with an “education allowance or payment of travel costs to assist an employee with the extraordinary and necessary expenses, not otherwise compensated for, incurred because of his service in a foreign area[,]” to include the travel expenses of dependents of an employee to and from a secondary educational institution, not to exceed one annual trip each way for each dependent. 5 U.S.C. § 5924 (2006).

Under applicable regulations, each student was a member of the claimant’s immediate family, a dependent of the claimant, and a family member, although not residing at the permanent duty station because of limitations imposed for residency. That is, each student is a child of the claimant’s spouse, unmarried, and under twenty-one years of age at the time of the renewal agreement travel. Federal Travel Regulation (FTR) 41 CFR 300-3.1 (2010); Joint Travel Regulations (JTR) app. A1; Department of State Standardized Regulations (DSSR) 040, 280.

As the agency notes, the authorizing statute does not require an agency to pay for educational travel; the determination of the agency is discretionary. The agency initially declined to authorize educational travel because it concluded that the students were not dependents. Thereafter, the agency declined to reimburse the claimant because the claimant lacked authorization for educational travel. The issue is whether the agency abused its discretion either when it did not authorize the travel before the travel or when it did not approve the travel after the fact. *Frederic S. Newman, Jr.*, GSBCA 15873-TRAV, 02-2 BCA ¶ 31,993.

An email message, dated February 9, 2011, from the Defense Finance Accounting Service to the agency states, regarding the college students:

[T]hey would be entitled to one round trip a year under Dependent Student Travel, provided they are under age 23 in accordance with the Department of State Standardized Regulations Chapter 280. Educational travel to an employee’s post shall not be authorized for the child when the responsible Government agency anticipates the employee’s transfer to the U.S. or his/her travel for home leave within 30 days of the scheduled date of the child’s departure for post.

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The non-residence students/dependents will not be issued or added to any orders unless they actually travel.

The first sentence of the communication correctly summarizes the regulations with respect to these students. The use of the word “entitled” in reference to educational travel expenses suggests that the authorization or approval should have been signed so long as the students actually travel. Despite a request in the course of this proceeding that the agency supplement the record with any guidelines, directives, or similar material which are to be considered when exercising discretion to approve or deny a request for student travel, the agency has presented no information. The email message supports the conclusion that the authorization and/or approval would have been granted. However, the agency is to exercise its discretion in light of the guidance in this opinion; the discretion exercised to date represents an abuse of discretion.

The agency has denied specifically the claimant’s request for airline-related expenses. For each student, the claimant purchased tickets, with payments of money and the use of award miles. With appropriate authorization or approval for the educational travel, the claimant would be entitled to travel expenses associated with the reimbursable travel. Although the claimant seeks payment for use of travel rewards (frequent flyer mileage), the claimant is entitled to no compensation for any purported value of the travel rewards. The claimant is not out-of-pocket money for the redeemed miles. Under present regulations, the Government does not serve as a bank to pay employees a rate of exchange for redeeming mileage or other award points. *Marc V. Dinger*, CBCA 2470-TRAV (Jan. 26, 2012). This conclusion is reached notwithstanding the fact-based circumstances discussed in *Ronnette Megrey*, CBCA 2240-TRAV, 11-1 BCA ¶ 34,768; other guidance is specific and applicable, *Richard J. Maillet*, GSBICA 16446-RELO, 05-1 BCA ¶ 32,910 (“Employees, even new and inexperienced ones, who secure transportation through the use of frequent flyer credits, coupons, or vouchers cannot be reimbursed for the value of the transportation.”).

With appropriate approval, the claimant could recoup, for the air travel of the two students, travel expenses of \$1658.71, composed of \$1613.71 (for two sets of round-trip tickets, where the receipt specifies that the claimant has been charged that amount inclusive of taxes), \$5 (taxes for tickets obtained through redemption of miles), and \$40 (fees for tickets obtained through redemption of miles). Because the agency has not addressed other particular travel expenses, it shall promptly consider and pay other travel expenses that are reimbursable under applicable regulations should it approve the educational travel.

JOSEPH A. VERGILIO
Board Judge