



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 26, 2013

CBCA 2921-TRAV

In the Matter of STEVEN L. MEINTS

Steven L. Meints, APO Area Europe, Claimant.

Curtis L. Greenway, Criminal Investigation Command, Department of the Army, Quantico, VA, appearing for Department of the Army.

POLLACK, Board Judge.

Steven L. Meints, claimant, an employee of the United States Army Criminal Investigation Command (CIC), was assigned to the European Fraud Resident Agency, a subunit of the Major Procurement Fraud Unit (MPFU), a directorate within the 701st Military Police Group (701st). MPFU is located in Germany and has offices in Kuwait, Iraq, and Afghanistan. Employees in claimant's position are rotated and deployed on temporary duty (TDY) for various periods to all three locations. Claimant here seeks \$6525.25 as per diem reimbursement at \$109 a day for TDY in Kuwait during 2012. The rate sought is that rate prescribed for the location by the Department of State Standardized Regulations, which cover TDY rates in foreign areas. CIC has allowed claimant TDY, but has unilaterally reduced the daily rate from \$109 to \$71 a day. CIC cites us to no regulatory authority for the action. It considers the lower number to be a fair and justified reimbursement for an employee on TDY in Kuwait.

In April 2010, claimant was directed to deploy to Afghanistan from his post in Germany. In July 2010, during preparation for that deployment, MPFU advised personnel under its command that individuals deploying to Kuwait would receive a reduced per diem of \$71 a day, as meals were to be provided to them for free. Thereafter, his deployment to Afghanistan was canceled and instead, he was deployed to Kuwait.

He left Germany, under orders for Kuwait, on September 20, 2012, and expected to be reimbursed for TDY on the basis of the State Department approved per diem. CIC states in their response to his claim that it “expected” that Mr. Meints would not receive a TDY rate of \$109, but rather would be limited to a reduced rate of \$71, because CIC further “assumed” that one or two meals a day would be provided to him from government dining facilities at no cost. CIC has acknowledged that Mr. Meints was not provided free meals in Kuwait, but rather was required to purchase meals. He purchased the meals using a Treasury-issued money card which he had to periodically replenish. Nevertheless, CIC has not changed its position as to the reduction. CIC also justifies the reduction on the after-the-fact basis that the money card shows Mr. Meints did not spend \$109 a day on food, and therefore, he should not be paid that sum.

The Government position in this matter is baseless. First, CIC acknowledges that the reduction was based on its expectation that Mr. Meints would be receiving free meals. That was not the case. Second, the rate for TDY is set at a lump sum, and accordingly, there is no requirement for receipts to justify that the money was spent.

More important, the facts in this case are very close to those addressed in our decision in *Paul R. Danley*, CBCA 2123-TRAV, 11-1 BCA ¶ 34,620 (2010), *motion for reconsideration denied*, 11-1 BCA ¶ 34,652. That case also involved MPFU and its earlier attempt to lower the per diem in Kuwait for an employee traveling on TDY. In that case, we clearly rejected the reduction attempted by MPFU and stated that the claimant was entitled to the per diem prescribed in regulation, with the exception of those days on which the claimant received free meals from the Government. When free meals are provided, a reduction is appropriate; however, where meals are not provided, a reduction based on the receipt of free meals cannot be justified. In *Danley*, we cited the various regulations establishing the proper per diem rates. At no time in that decision did we focus on how much was actually expended, or indicate that such would be controlling.

There is a process in the Joint Travel Regulations (JTR) for reducing otherwise allowable per diem in certain areas and situations. However, the regulations require that any reduction occur prior to the start of the employee’s travel, which is not the case here. Further, the regulations require that the reduction has to be imposed at a higher level than the one utilized for this attempted reduction. The process to be followed is spelled out in JTR C4550-C, -D, and -E, which address what is required to justify a reduction when some or all meals are provided at no cost. If CIC intends to reduce the rate, then it must follow the prescribed procedure in the JTR. Otherwise, it cannot unilaterally reduce the per diem in situations such as that of Mr. Meints.

Accordingly, claimant is entitled to payment of the difference between the authorized and actually paid per diem.

HOWARD A. POLLACK
Board Judge