



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 12, 2014

CBCA 3124-TRAV

In the Matter of TODD E. JOHANESSEN

Todd E. Johanesen, Washington, DC, Claimant.

John Walter, Debt Management Monitor, National Geospatial-Intelligence Agency, Department of Defense, Arnold, MO, appearing for Department of Defense.

STEEL, Board Judge.

Claimant, Todd E. Johanesen, is a civilian employee of the Department of Defense (DoD) National Geospatial-Intelligence Agency (NGA). He asks this Board to review the denial of reimbursement of mortgage interest and property tax costs incurred in connection with lodging at his personally-owned residence while on temporary duty (TDY) travel.

Background

Prior to October 2011, civilian employees were entitled to reimbursement of mortgage interest and property tax expenses incurred when using a personally-owned residence while on TDY travel. Effective October 14, 2011, as a result of a change in the Federal Travel Regulations (FTR), these expenses became ineligible for reimbursement. The Joint Travel Regulations (JTR), which reflected the pre-October 2011 FTR regulation, were not amended until January 2012.

Claimant is a technology executive employed by the NGA whose permanent duty station (PDS) is located in St. Louis, Missouri. On December 1, 2011,

Mr. Johanesen submitted a request for routine TDY travel from his PDS in St. Louis to Washington, D.C. for the purpose of attending an information meeting. Mr. Johanesen's request covered the dates December 14 through December 20, 2011. The travel-approving/directing official electronically approved Johanesen's request and authorization on December 7, 2011. Block 13b of the travel authorization form authorized an "other rate of per diem," which apparently approved the mortgage and tax expenses at issue in this matter. Pursuant to this authorization, Mr. Johanesen traveled from St. Louis to Washington, D.C. and, while in D.C. from December 14 to December 20, 2011, lodged at his personally-owned residence.

On January 4, 2012, Mr. Johanesen submitted to NGA a voucher for reimbursement of prorated amounts of monthly mortgage interest and property tax expenses incurred for the use of his personally-owned residence as lodging during TDY travel.

The following month, Mr. Johanesen received an email request from the Defense Travel Management Office (DTMO) for receipts to support his request for lodging on his voucher, indicating that if he had lodged with friends the lodging would "need to be removed[.]" Mr. Johanesen responded that he had not stayed with friends and that the lodging costs were associated with the home he owns in Washington, D.C. In his reply, Mr. Johanesen cited Joint Federal Travel Regulations, Vol. 1 Change 275, Section U4137 in support of his lodging claim.¹ After several email message exchanges between Mr. Johanesen and DTMO, in which members of the office variously expressed concerns regarding the appropriateness of his claim, the travel office, including the official who had originally authorized his TDY travel, ostensibly satisfied itself that Mr. Johanesen's proffer was sufficient.

On September 21, 2012, however, Mr. Johanesen received notification from DTMO that a portion of the claim for his December 2011 travel had been disallowed. Citing changes to the JTR dated January 1, 2012, but effective October 14, 2011 (Change 555), DTMO determined that Mr. Johanesen was ineligible to receive reimbursement for the claimed \$194.70 in prorated mortgage interest and property tax expenses associated with his personally-owned residence. Claimant ask us to review the matter on the ground that retroactive application of Change 555 impermissibly denies his previously approved allowance for these expenses.

¹ Although the claimant cites to the Joint Federal Travel Regulations, as he is a civilian employee of the Department of Defense, the Joint Travel Regulations apply to this travel claim.

Discussion

This Board has recognized that “[a] travel order establishes the conditions, in writing, under which official travel and transportation are authorized at government expense, and provides a notice and record of the employee’s instructions and entitlements.” *Jack J. Pagano*, CBCA 1838-TRAV, 10-1 BCA ¶ 34,408 (citing *Andre E. Long*, GSBCA 14498-TRAV, 98-1 BCA ¶ 29,731). Accordingly, unless an employee’s travel orders were clearly erroneous, “in conflict with a law, regulation, or agency instruction, or [were] contrary to the agency’s definite intentions when the orders were issued,” an agency cannot retroactively amend travel orders to increase or decrease the employee’s benefits. *Id.*

Here, because claimant’s travel orders conflicted with existing regulation, both at the time of the request and when they were approved, the agency’s retroactive decrease in his allowance was proper. Prior to October 2011, under the FTR, civilian employees were entitled to reimbursement of mortgage interest and property tax expenses incurred when using a personally-owned residence while on TDY travel. However, because of the change in the FTR effective October 14, 2011, at the time of travel these expenses were ineligible for reimbursement. *See* 41 CFR 301-11.12. But at the time of claimant’s travel, the JTR—the travel regulations specific to DoD civilian employees—had not been updated to reflect this overarching change in the Government’s policy. *See* JTR C4555-E (Dec. 2011) (Change 554). It was not until January 1, 2012, that DoD amended its regulations to include the FTR’s prohibition on reimbursement for expenses incurred when using a personally-owned residence while on TDY travel. The effective date of this change was October 14, 2011.

While we apply the JTR to claims brought by DoD civilian employees, we may not do so where it conflicts with the FTR. *Jimmy D. Graves*, CBCA 963-TRAV, 08-1 BCA ¶ 33,805. In *Graves*, we explained:

The FTR is issued by the Administrator of General Services to implement chapter 57 of title 5, United States Code, regarding travel, transportation, and subsistence expenses of federal civilian employees. 5 U.S.C. § 5707(a) (2000). Because the FTR is promulgated under delegation from the Congress, it is a “legislative rule” which is entitled to special weight. The provisions of the FTR are binding on all agencies. *Renea A. Webb*, GSBCA 15220-TRAV, 00-1 BCA ¶ 30,889;

see also Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843-44 (1984); *United States v. Grumman Aerospace Corp.*, 927 F.2d 575, 578 (Fed. Cir. 1991). The JTR are “interpretive rules” since they are typically issued without statutory imprimatur and generally used to implement and supplement the FTR for civilian Department of Defense (DoD) employees.

Id. at 167,343.

The FTR “trumps” the JTR unless the JTR provision at issue “implements a statute specific to the DOD.” *Id.* This exception to the general rule is inapplicable here. As confirmed by the retroactive revision in January 2012, there was no basis for the JTR language that was in effect at the time claimant received his travel orders. JTR Change 555 expressly implements the October 2011 FTR change applicable to all federal civilian employees.

Claimant stresses that it would be unreasonable to require him to comply with a rule that did not exist under the JTR at the time he traveled. However, the FTR controls when in conflict with interpretive, agency-specific travel regulations such as the JTR. The FTR rules existing at the time of claimant’s authorization and travel disallowed the claimed expenses.

Decision

Mr. Johanesen is not entitled to the \$194.70 in prorated mortgage interest and property tax expenses he claims.

The claim is denied.

CANDIDA S. STEEL
Board Judge