UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 20, 2014

CBCA 4121-TRAV

In the Matter of GILDA E. BEST

Gilda E. Best, Arlington, VA, Claimant.

Samantha J. Black, Office of the Judge Advocate General, Department of the Army, Washington, DC, appearing for Department of the Army.

WALTERS, Board Judge.

Claimant, Gilda E. Best, a civilian employee of the Department of the Army (agency), asks the Board to review the agency's determination that she is only entitled to partial reimbursement for travel expenses incurred while she was on temporary duty (TDY) travel. For the reasons explained below, we grant Ms. Best's claim for the balance of her travel expenses.

Background

The agency assigned claimant to attend training at Fort Riley, Kansas from August 3 through August 8, 2014. Claimant's permanent duty station is in Arlington, Virginia. On August 1, 2014, claimant advised Tammy LeSane, her immediate supervisor, that she had a medical condition that prevented her from flying to Kansas. Ms. LeSane cautioned her that failure to participate in the scheduled training would reflect adversely on her performance evaluation, but allowed Ms. Best to visit a nearby clinic at Ft. Belvoir, Virginia, so that she might obtain medical documentation for her condition. Claimant subsequently provided Ms. LeSane with a clinic doctor's letter stating that, in her condition, it would be "very difficult" for Ms. Best to fly to the training session. Upon receiving the letter, Ms. LeSane amended claimant's travel orders to provide for her use of a rental car to drive to Kansas instead of

flying. Notably, the amended order provided that the rental car was to be picked up on August 2 and returned on August 9, but indicated that these dates were "outside the trip dates" and would be forwarded to an Approval Official (AO) "for correction." Apparently, Ms. LeSane's intent was that the amended orders she provided Ms. Best ultimately would be revised further to expand the length of the trip, to accommodate two-day drives in each direction.

Those amended orders also included provisions for lodging, meals and incidental expenses (M&IE) for August 3 through August 8, terminal parking, and a baggage fee. These expense items were taken from the original travel orders, which contemplated flying, and were not modified (or eliminated – as in the case of terminal parking and the baggage fee) to reflect the change in mode of transportation.

On August 2, 2014, claimant attempted to rent a car but was unable to do so, because she did not have her government travel card (GTC).[1] She then called Ms. LeSane, who gave her oral authorization to drive her privately owned vehicle (POV) to the training in lieu of using a rental vehicle. At the time, claimant states, Ms. LeSane promised that her orders would later be further revised to authorize POV use, so that she could recover her mileage and other costs. That promise was never fulfilled, however.

After receiving Ms. LeSane's oral authorization, and having been advised previously by Ms. LeSane that her performance evaluation would be adversely affected were she not to attend the training, claimant states that, while she was still quite anxious about making the trip, she reluctantly proceeded to Fort Riley. She drove her POV from her home to Terre Haute, Indiana, on August 2, lodging there overnight at a commercial hotel. The following day she drove to Fort Riley. She attended the training from August 3 until August 8. Claimant then returned to her home, driving her POV from August 8 through August 9, but did not lodge at a hotel on that return trip, choosing instead to stay overnight with a friend while en route home. (There is no evidence that Ms. Best incurred extra mileage in doing this.)

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[1] Miscommunication between the agency and claimant had resulted in the agency first mistakenly mailing her replacement GTC to an old address. The agency subsequently had a duplicate GTC mailed to her hotel in Fort Riley, Kansas, so that it would be there upon her arrival. As a result, the GTC was not available for her use in Virginia when she attempted to rent a car. Claimant, who did not have a personal credit card, states that she had insufficient funds available on her debit card to permit her to rent the vehicle on that card in addition to covering the costs she would incur while traveling to Fort Riley. The car rental company, she says, was insisting on her paying in advance for the entire rental period.

Upon her return from Fort Riley, claimant sought reimbursement for her travel expenses. The agency concluded that Ms. Best could be provided only with partial reimbursement of her costs, notwithstanding her documented medical condition, because the agency believed it could only reimburse her for the constructive cost of her travel to Fort Riley, i.e., the theoretical cost that it developed based on the commercial air transportation that would have been used under her original orders. The agency thus compensated Ms. Best for a total of only $1341.78, representing her lodging at Fort Riley, M&IE for the period August 3 through August 8 (six days), FedEx charges for delivery of claimant's GTC to the hotel in Fort Riley, and mileage capped at $690.28, the policy-constructed airfare.[2] The agency refused to reimburse claimant for the remaining $945.85 she had incurred, i.e., the balance of her POV mileage, as well as all of her road tolls, two days' worth of M&IE, and her hotel lodging in Terre Haute on August 2, because none of these costs would have been expended had she flown to Fort Riley on August 3 and returned to Virginia on August 8, as originally ordered.

Claimant requested that this Board review the agency's determination as to the $945.85, and the agency indicated that it would have no objection to providing that amount to claimant, so long as it is permitted to do so under the regulations.

Discussion

Travel orders establish "the conditions, in writing, under which official travel and transportation are authorized at government expense, and [provide] a notice and record of the employee's instructions and entitlements." *Todd E. Johanesen*, CBCA 3124-TRAV, 14-1 BCA ¶ 35,539 (quoting *Jack J. Pagano*, CBCA 1838-TRAV, 10-1 BCA ¶ 34,408). Though travel orders "[m]ust not be revoked/modified retroactively to create/deny/change an allowance," they may always be "corrected" retroactively "to show the original intent." JTR C2205-A.1; *Donald N. Striejewske*, CBCA 2029-RELO, 10-2 BCA ¶ 34,469; *see also Jeffery A. McQuillan*, CBCA 3472-RELO, 13 BCA ¶ 35,422.

Here, the agency believed it was bound by JTR C3050-C.1, which provides that "reimbursement for transportation used must not exceed the POLICY CONSTRUCTED airfare (APP A definition) available for scheduled commercial air service over the usually traveled direct route between the origin and destination." The agency capped claimant's mileage reimbursement at $680.28, the amount it determined as the cost for the least expensive, unrestricted economy/coach airfare over the usually traveled direct route between

[2] The Joint Travel Regulations (JTR) defines policy-constructed airfare as "[T]he least expensive, unrestricted economy/coach airfare." JTR app. A.

Arlington, Virginia, and Fort Riley, Kansas. Imposing this purported $680.28 reimbursement cap, the agency denied claimant recovery of her road toll costs as well.

The agency in this instance misconstrued the regulations. Constructive cost analysis is appropriate under applicable regulations when an employee elects to use his or her POV instead of the authorized mode of transportation, 41 CFR 301-10.309 (2014), but is not to be used when the employee, as in this case, has been authorized use of the POV as an alternative mode of transportation. *William T. Cowan, Jr.*, GSBCA 16525-TRAV, 05-1 BCA ¶ 32,906 (agency may not reduce an employee's entitlement to the constructive cost of previously authorized air travel when the agency subsequently authorized the claimant to travel by POV); *see also Michael C. Biggs*, CBCA 928-TRAV (Apr. 23, 2008). While the agency may have authorized travel by aircraft initially, it subsequently revised claimant's travel orders to authorize travel by rental car. Furthermore, it is clear that the amended travel orders Ms. LeSane provided to Ms. Best did not reflect the agency's ultimate intention that Ms. Best travel using her POV and that final orders be issued by the AO to cover POV use.

JTR C2210-B expressly allows for the issuance of oral travel orders in urgent or unusual situations and declares them the equivalent of written orders, so long as they are given in advance of travel. This regulation also calls for subsequent written confirmation of those orders by competent authority, i.e., in the form of written travel orders executed by an AO. The situation here was sufficiently urgent and unusual. The agency insisted that the claimant arrive at her destination by August 3 and had no time to authorize a different mode of transportation by means of a formal written order. In this regard, the agency does not dispute that Ms. LeSane orally authorized POV use for Ms. Best on August 2, prior to her departure for Kansas, or that she promised that the written orders would later be revised to expressly authorize POV use. Thus, in this case, notwithstanding that the agency failed subsequently to confirm Ms. LeSane's oral instructions by means of revised written travel orders issued by an AO per JTR C2210-B, the agency should have determined claimant's reimbursement as if her travel orders had been further revised in writing to provide for travel by POV.

The regulations make clear that POV travel should be considered as being to "the government's advantage" when a common carrier, contract rental automobile, or government furnished transportation is not available to the employee. JTR C4725-A.2. As the agency itself acknowledges, JTR C3050-B.4.c provides that air transportation is not considered "available" when "travel via aircraft is medically inadvisable," which was the case here. Claimant's medical condition precluded her from flying to Kansas and back. There is no suggestion that any other means of government furnished transportation was available to her. Claimant in this case was unable to rent a car, because the agency had not made a GTC

available for her use when it was needed to accomplish the rental. Due to the unavailability of other means of transportation, and knowing that her attendance at the training was important to the agency, claimant's supervisor authorized claimant to proceed to Fort Riley using her POV and promised her full reimbursement of her mileage and other associated costs. Under these circumstances, POV use should be regarded as being to the Government's advantage, and claimant should recover both the balance of her mileage and the road toll costs she incurred in connection with her POV use. *See* JTR app. G.

The amended travel orders Ms. LeSane provided claimant reflected an intent that the original trip be extended to cover travel via automobile (albeit a rental vehicle) and an overall trip lasting eight days from August 2 through August 9, 2014. Under these circumstances, Ms. Beck ought not be restricted to the original aircraft travel dates, August 3 through August 8, 2014. Moreover, Ms. LeSane's promise later to provide a new set of written orders authorizing POV use to and from Fort Riley indicates a clear intent that Ms. Best be reimbursed for her reasonable costs in making the drive, including the costs of lodging in Terre Haute on August 2 en route to Fort Riley (and would have covered reimbursement for lodging costs for the return trip as well, if Ms. Best had chosen to stay overnight in a hotel). The same is true for the two additional days of M&IE.

The present case is unlike a situation where an agency cannot be bound by communications of advice or information that conflict with regulations – where it would be prohibited from honoring its commitments based on such communications, even if the employee involved had relied to his or her detriment on the agency's assurances. *E.g., Gary E. Turner*, CBCA 4178-RELO (Nov. 10, 2014). Here, Ms. Best had been given clear instructions by her supervisor and had no choice but to proceed in her POV to Fort Riley. Ms. LeSane's directive to proceed by POV did not conflict with any statute or regulation, nor did Ms. LeSane's promise to later revise claimant's written travel orders to conform to that directive. Indeed, as noted above, the regulations provide that travel orders "may be retroactively corrected to show the original intent." JTR C2205-A.1.a; *see Peggy L. Clevenger*, CBCA 3854-RELO (Nov. 10, 2014). Claimant's orders thus should be corrected in this case to reflect what clearly was the agency's intent as of August 2, and claimant should recover the remainder of the travel costs she incurred in connection with her training at Fort Riley.

Decision

For the foregoing reasons, the claim for $945.85 is granted.

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RICHARD C. WALTERS
Board Judge