



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 30, 2007

CBCA 686-TRAV

In the Matter of MICHAEL BILODEAU

Joe Dolan, National Representative, American Federation of Government Employees, Warren, MI, appearing for Claimant.

Paul W. Henne, Assistant Director -- Business Management and Operations and Chief Financial Officer, Fish and Wildlife Service, Washington, DC, appearing for Department of the Interior.

DANIELS, Board Judge (Chairman).

The Government is not responsible for the transportation costs an employee incurs in traveling from his permanent residence to his official duty station to begin temporary duty travel if his permanent residence is not the place from which he regularly commutes to work.

Background

Michael Bilodeau is an employee of the Fish and Wildlife Service (FWS) who is assigned to the Sea Lamprey Control Program. During the program's "field season," from April to October, he works a ten-day-on, four-day-off schedule.

Mr. Bilodeau resides in Midland, Michigan. His official duty station is in Marquette, Michigan, 338 miles north and west of Midland. While working in Marquette, he spends each night in or near that city. Between ten-day work periods, he returns to his home in Midland.

FWS authorized Mr. Bilodeau to travel on temporary duty during the 2005 field season. On several occasions during the spring of that year, Mr. Bilodeau traveled from

Midland to Marquette to pick up a government-owned vehicle and then drove in that vehicle from Marquette to a distant location where he performed temporary duty and stayed overnight. He asked FWS to pay the costs, on a per-mile basis, of his trips between Midland and Marquette (and back to Midland). The agency refused to make payment; it reimbursed the employee only for the expenses of travel from Marquette to the places where he performed temporary duty. The employee and the agency seek our determination as to whether the refusal to pay the costs of the trips between Midland and Marquette was justified.

Discussion

The FWS region in which Mr. Bilodeau works has established rules for payment of travel expenses “from place of abode to and from the official duty station on a day of travel requiring an overnight stay.” These rules provide that “[r]eimbursement for transportation expenses, including privately owned vehicle (POV) mileage, between the employee’s place of abode and the airport or other commercial transportation venue or the official duty station on a day of travel requiring an overnight stay will be the most cost effective for the Agency.” The term “place of abode” is critical to this dispute. The rules define it: “The employee’s place of abode is defined as the place from which the employee regularly commutes to his/her official duty station. Regularly will mean on a daily basis when the employee is scheduled to work at the duty station on days when [he/she is] not on official travel. The place of abode may or may not be the employee’s residence of record with the Employer and it may or may not be a structure.”

These rules are clear in addressing the issue presented to the Board. Under them, whenever Mr. Bilodeau leaves for temporary duty requiring an overnight stay from his place of abode in or near Marquette -- the place from which he regularly commutes to his official duty station -- FWS must reimburse him for POV mileage between that location and the temporary duty site. However, whenever he leaves for temporary duty from his permanent residence in Midland, reimbursement for the POV mileage will not be made.

Mr. Bilodeau contends that the FWS region’s rules are invalid because they conflict with a provision of the Federal Travel Regulation (FTR). The provision is 41 CFR 301-10.306 (2005), which states:

What will be reimbursed if I am authorized to use a POV instead of a taxi for round-trip travel between my residence and office on a day of travel requiring an overnight stay?

If determined advantageous to the Government, you will be reimbursed on a mileage basis plus other allowable costs for round-trip travel on the beginning and/or ending of travel between the points involved.

The employee's theory is that the FWS rules, as interpretative agency rules, are trumped by the FTR, which is a legislative rule. The employee properly cites *Brian T. Walsh*, GSBCA 15703-TRAV, 02-1 BCA ¶ 31,818; *Renea A. Webb*, GSBCA 15220-TRAV, 00-1 BCA ¶ 30,889; and *Lorrie L. Wood*, GSBCA 13705-TRAV, 97-1 BCA ¶ 28,707 (1996), in support of this proposition.

While the principle on which Mr. Bilodeau bases his position is correct, the application is not. At least as long ago as 1980, the General Accounting Office (GAO -- now called the Government Accountability Office), one of our predecessors in settling federal employee travel expense claims, held that the terms "residence," "home," and "place of abode," as generally used in the FTR, "have reference to the residence from which an employee regularly commutes to work each day." *Merwin S. Dunham*, B-197360 (July 15, 1980). Later GAO decisions reiterated this understanding. In *John C. Schwappach*, B-201361 (Dec. 30, 1981), GAO stated, "Our Office has considered the question of what constitutes an employee's residence for the purpose of reimbursement for temporary duty travel, and we have held it is the place from which the employee commutes daily." In *Joe B. Knight*, B-210660 (Dec. 26, 1984), GAO held, "For the purpose of mileage reimbursement . . . the terms 'residence' and 'place of abode' refer to the place from which an employee regularly commutes." Further, "an employee's decision to maintain a residence substantially inconvenient to his assigned duty station is a matter of personal choice for which the Government is not obligated to compensate the employee through additional mileage allowances." In *Hon. Jack Brooks*, B-21055, et al. (Dec. 5, 1986), GAO explained, "GSA [General Services Administration] travel regulations [the FTR] and [GAO] decisions regard an official's 'home', for purposes of compensation for official travel expenses, to be the residence from which the employee regularly commutes to work."

After the responsibility for settling federal employee travel claims was transferred from GAO to the General Services Board of Contract Appeals (GSBCA), that board continued GAO's reading of the terms in question. In *Anthony J. Kryfka*, GSBCA 13709-TRAV, 97-2 BCA ¶ 29,147, the GSBCA distinguished between an employee's permanent "residence" and his "place of abode" near his official duty station. In *Daniel Brady*, GSBCA 16580-TRAV, 05-1 BCA ¶ 32,908, the board accepted as reasonable an agency rule which differentiated "commuting residence" -- the place from which an employee commutes to and from work each day -- from "residence" -- the employee's permanent home. The GSBCA -- and more recently, the Civilian Board of Contract Appeals, the successor to the GSBCA in settling travel claims -- have upheld and applied agency rules

which authorize reimbursement of POV mileage from an employee's home, rather than his office, when the employee is traveling overnight on temporary duty. *Issy Cheskes*, CBCA 689-TRAV, 07-2 BCA ¶ 33,624; *Jerry R. Teter*, GSBCA 15292-TRAV, 00-2 BCA ¶ 30,957; *Roger B. Sherry*, GSBCA 14399-TRAV, 98-2 BCA ¶ 30,044. In all of these cases, however, the "home" from which the employee began his journey was what FWS calls his "place of abode" -- the location from which the employee commuted to and from work each day.

The FWS region's rules we are called on to examine in this case are similar to agency rules which have been considered for more than a quarter-century to be reasonable and permissible interpretations of the FTR's provisions regarding reimbursement of temporary duty travel expenses. We hold that the FWS region's rules are reasonable and permissible, and that the agency has applied them properly in denying reimbursement to Mr. Bilodeau for his travels from his permanent residence in Midland to and from his official duty station in 338-mile-distant Marquette while beginning temporary duty assignments.

STEPHEN M. DANIELS
Board Judge