UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 20, 2007

CBCA 471-TRAV

In the Matter of ROBERT O. JACOB

Robert O. Jacob, Lusby, MD, Claimant.

Judy A. Hughes, Travel Management and Procedures Office, Defense Finance and Accounting Service, Columbus Center, Columbus, OH, appearing for Department of Defense.

HYATT, Board Judge.

Claimant, Robert O. Jacob, is a civilian employee of the Naval Air Systems Command, Atlantic Test Range in Patuxent River, Maryland. He was scheduled to perform official travel to Cordova, Alaska, to support missile tracking tests sponsored by the Missile Defense Agency. His travel was approved in advance of the scheduled dates for the tests and his orders were issued on January 12, 2006. He was scheduled to fly to Anchorage, Alaska, on Sunday, January 22, 2006, out of Baltimore Washington International Airport (BWI), and continuing on to Cordova that day. Mr. Jacob, as the senior representative of the three government attendees at the tests at this remote site, was a key member of the team and was essential to the mission.

Late on Sunday, January 15, 2006, Mr. Jacob learned that his mother-in-law, who had resided in Jacksonville, Florida, had passed away. Her funeral was scheduled to take place in Florida later that week. Mr. Jacob and his family began driving to Florida the next day to attend the funeral. On that morning, Mr. Jacob also contacted his supervisors, the Head of the Atlantic Range Operations Division and her deputy, Mr. Havens, to inform them of the situation and to request a week of leave as a result of the bereavement. His request for leave was granted. Mr. Jacob raised the matter of his upcoming travel assignment and expressed

concern that he would be unable to return to Patuxent River in sufficient time to make the scheduled departure from BWI on January 22. He inquired whether it would be allowable to change his flight departure from BWI to Jacksonville, which would accommodate his need to attend the funeral and still arrive in Cordova in sufficient time to support the tests. Mr. Havens told Mr. Jacob that he would look into whether this was feasible and call him back.

Mr. Havens contacted the administrative assistant responsible for processing travel arrangements and travel claims for the office. He asked her to determine whether Mr. Jacob could be authorized to depart from Jacksonville, rather than from BWI, and to make the appropriate arrangements if he could. The assistant contacted the Travel Help Desk and SATO (the contract travel office) for guidance. She was told that the airfare that could be reimbursed by the Government would be limited to what the cost to the Government would be to issue an airline ticket from Jacksonville to Cordova. The SATO representative also stated that Mr. Jacob would have to purchase his own ticket using his own personal credit card. After obtaining Mr. Jacob's credit card information, the assistant purchased his airline ticket. Both Mr. Jacob and his supervisors understood that Mr. Jacob could be reimbursed by the Government so long as he did not purchase a ticket that was more expensive than the Government fare from Jacksonville to Cordova.

Although the record provided does not include a written amendment to claimant's travel orders, Mr. Havens submitted a statement confirming that he authorized the alteration of Mr. Jacob's travel plans, at government expense, in advance of his departure from Jacksonville. Mr. Havens stated that his approval was predicated upon two factors: (1) his understanding that the change would constitute an allowable expense, and (2) the pressing need for Mr. Jacob to attend the time-critical tests in Alaska. Mr. Havens approved the claim for airfare when Mr. Jacob returned from the trip to Alaska.

When the claim was submitted to the travel settlement office in Patuxent River, Mr. Jacob's reimbursement was limited to what it would have cost for round trip travel between BWI and Alaska. The departure from Jacksonville cost an additional $597.20, which was disallowed, even though it had been authorized and approved by the command.

An appeal was forwarded to the Defense Finance and Accounting Service (DFAS). DFAS, after carefully reviewing the relevant provisions of the Joint Travel Regulations (JTR), concluded that, despite the extenuating circumstances, there was no basis for allowing payment to Mr. Jacob of the additional airfare expense occasioned by departing from Jacksonville rather than from BWI. This determination was based on JTR C2000-C, which states that an employee on a temporary duty (TDY) travel authorization is authorized travel/transportation allowances not to exceed the actual transportation authorized and used up to the constructed transportation cost between the employee's permanent duty station

(PDS) and TDY location. The only exception to this rule is when the employee is notified of the need to perform official business travel after departing on authorized leave. DFAS determined that this provision does not apply in this case because Mr. Jacob's TDY had been scheduled prior to his departure for leave.

Although DFAS could not find a basis under the JTR for paying the claim, the officials who reviewed this matter all agreed that under the circumstances the claim has merit and should be forwarded to the Board for review.

Discussion

By statute, the Government is required to reimburse employees for the actual and necessary costs incurred to travel on official business. 5 U.S.C. 5702 (2000). Under the Federal Travel Regulation (FTR) agencies are to limit payment of travel costs to those which are necessary to accomplish the mission in the most economical and efficient manner and in accordance with the rules stated throughout the FTR. 41 CFR 301-2.2, -70.1 (2005). In keeping with this policy, the FTR specifies that an employee performing a TDY assignment must "travel to [his or her] destination by the usually traveled route unless [the] agency authorizes or approves a different route as officially necessary." 41 CFR 301-10.7. If an employee travels by an indirect route, or interrupts travel for his or her personal convenience, the employee's reimbursement "will be limited to the cost of travel by a direct route or on an uninterrupted basis." If there are any additional costs occasioned by a change in route or interruption in travel, the employee is responsible for those costs. In another provision of the FTR, the employee is advised that he or she is responsible for excess costs resulting from circuitous routes and the like that are "unnecessary or unjustified in the performance of official business." 41 CFR 301-2.4.

The provision of the JTR relied upon by the agency is worded somewhat differently than is the FTR, but essentially echoes the reasoning that added expense caused by indirect routes and interrupted travel for the convenience of the employee may not be reimbursed. With respect to TDY travel involving departure from or return to a non-PDS location it says that:

> An employee on a TDY travel authorization is authorized travel/ transportation allowances NTE [not to exceed] the actual transportation cost for the transportation mode authorized and used up to the constructed transportation cost between the employee's PDS and TDY location. When TDY travel is to/from a non-PDS location:

> 1. The traveler must pay excess travel/transportation costs; and
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> 2. Constructed costs for each leg of the trip must be based on Government . . . city-pair contract airfares, if available.

JTR C2000-C.

It is well-settled that these provisions require an employee to pay any added costs attributable to a deviation from the usually-traveled, uninterrupted route. *See, e.g.*, *Lisa Schwartz*, GSBCA 16669-TRAV, 05-2 BCA ¶ 33,040; *Deborah H. Murray*, GSBCA 15838-RELO, 03-1 BCA ¶ 32,184; *Peter J. Van Deusen*, GSBCA 15366-TRAV, 01-1 BCA ¶ 31,371. This rule has been recognized both by the Board and by the Comptroller General, who decided claims of this nature prior to mid-1996.

A Comptroller General decision, *Lawrence O. Hatch*, B-211701 (Nov. 29, 1983), provides helpful guidance in understanding this bright line rule. This decision explained that the relevant provisions of the FTR and JTR strictly limited reimbursement for TDY travel to the constructive cost of a round trip originating and ending at the PDS even if the travel orders authorized departure from and/or return to another location to accommodate the personal circumstances of the traveler.[1] In *Hatch*, the employee had requested that his TDY orders depart from and return to his vacation location and his orders had been issued accordingly. His vacation plans had been made prior to the occurrence of a need for TDY travel, but the need for TDY travel had arisen, and orders had been issued, prior to his departure from the PDS for annual leave. In addressing the arguments raised by Mr. Hatch, who asserted that his annual leave dates could not be altered and that he would not have returned prematurely to his permanent duty station to begin travel, the Comptroller General stated:

> [T]he scheduling of annual leave and temporary duty assignments and recall to headquarters are matters that are subject to the discretion and control of the employing agency.

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[1] There is one exception to this general rule. If an agency interrupts an employee's leave by directing the employee to perform temporary duty, the agency is responsible for the expenses incurred to travel from the employee's location while on leave to the location where the temporary duty is performed. *Jack W. Tucker*, GSBCA 16928-TRAV, 06-2 BCA ¶ 33,432; *Larry E. Johnson*, GSBCA 16774-TRAV, 06-2 BCA ¶ 33,359. As the Government notes, this exception is not applicable here because the need for TDY travel was identified prior to claimant's travel to Florida.

> The employee may travel on leave to the location of his choice and he ordinarily bears the expense of returning to his permanent duty station. . . . Concerning the assurance to Mr. Hatch that the travel orders authorized reimbursable expenses . . . , we have repeatedly held that the Government is not liable if an official exceeds his authority by granting a benefit in excess of that authorized by law.

Further, the Comptroller General squarely rejected the notion that the travel approving official might, after considering both the Government's needs and the employee's personal desires, give prior authorization to begin travel from a leave point from which reimbursable costs in excess of constructive travel between permanent and temporary duty stations would be generated. Thus, while an employee might travel to perform TDY travel from a location other than the PDS, the Government is not authorized to pay for any extra cost that might be incurred as a result.

Looking at the present provisions of the FTR, which are consistent with the provisions in effect when *Hatch* was decided,[2] and the language of the JTR, we must conclude that DFAS has correctly interpreted the applicable law. Travel approving officials do not possess the authority to authorize reimbursement of travel that is not the direct, usually traveled route from the employee's PDS to the TDY location and back, regardless of how compelling the personal circumstances of the employee may be.

In considering whether the Navy might be able to reimburse Mr. Jacob the additional expense occasioned by his departure from Jacksonville, we have reviewed two decisions of the General Services Board of Contract Appeals (GSBCA), our immediate predecessor in reviewing these cases, which were decided solely with reference to the FTR.

The board considered the FTR's guidance as it applies to departures for TDY from a location other than the PDS in *K. Wesley Davis*, GSBCA 15623-TRAV, 02-1 BCA ¶ 31,680 (2001). This decision addressed a claim brought by an employee of the Social Security Administration whose official duty station was located in Dallas, Texas. Mr. Davis maintained a residence in Dallas for the purpose of commuting to work on a regular basis, but his family lived in Shreveport, Louisiana. Mr. Davis routinely spent weekends in Louisiana with his family. He was scheduled to travel to Columbia, South Carolina, for

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[2] The current version of the FTR sets forth the regulations in a question and answer format, but the substantive provisions remain unchanged. *See Delner Franklin-Thomas*, GSBCA 15905-TRAV, 03-1 BCA ¶ 32,126 (2002).

training. To attend the training he needed to depart on a Sunday, and would be returning on Friday of that week. Because he intended to be in Shreveport for the first weekend, and wished to return to Shreveport for the following weekend, he asked the agency to authorize his departure and return from Shreveport, rather than from Dallas. His travel orders reflected this request. After he returned and submitted a request for reimbursement, the agency advised him that he could only be reimbursed the cost of the round trip fare from Dallas to Columbia, which was significantly less than the fare from Shreveport to Columbia and back.

The board in *Davis* noted that the departure and return to Shreveport had been authorized in advance of the travel. The board reasoned that while an agency is under no obligation to authorize an employee to depart and/or return to a location other than the PDS, at the same time there is nothing in the FTR to suggest that an agency cannot, "in its discretion and for reasonable cause, authorize an employee to start and/or complete TDY travel at a point outside the employee's PDS area." The board further explained that such circumstances should not be viewed as involving indirect routing of travel. Finally, the board pointed out that if an agency has the discretion to make a specific authorization and does so, it cannot withdraw that authorization once the employee has incurred expenses in reliance on it. *Davis*, 02-1 BCA at 156,550-51 (citing *Linda M. Conaway*, GSBCA 15342-TRAV, 00-2 BCA ¶ 31,133). Thus, the board held that Mr. Davis was entitled to be reimbursed for the full cost of his trip.[3]

In a subsequent case involving a litigating attorney employed by the Equal Employment Opportunity Commission (EEOC), the board extended the rationale of *Davis*. The EEOC attorney had planned a trip from her PDS in New York City to her parents' home in Memphis, Tennessee, to leave her infant daughter in their care while she worked on a litigation matter requiring an extensive commitment of time. She had purchased a round trip ticket from New York City to Memphis and back at a restricted rate. Shortly before she left for Tennessee, the attorney learned that her presence was required at a court hearing in Syracuse, New York, on the day that she was scheduled to return from Tennessee. The cost of changing her tickets for the Tennessee trip to return to New York earlier would have been prohibitively expensive. Her supervisor approved a change in travel plans to allow her to fly from Tennessee to Syracuse and then return to her PDS in New York. Thereafter, the agency disallowed the additional expense resulting from this arrangement and limited her

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[3] The *Davis* decision is now addressed by paragraph C2000-D of the JTR, which permits travel to be authorized to and/or from an employee's family residence away from the PDS, although relative cost should be considered before such travel is authorized.

reimbursement to the amount it would have cost to fly round trip between New York City and Syracuse.

The board disagreed with the agency's position, relying on its prior decision in *Davis*, which established that "there is no reason why an agency cannot, at its discretion and for reasonable cause, authorize an employee to start and/or complete temporary duty (TDY) travel at a point outside the employee's PDS area." *Delner Franklin-Thomas*, GSBCA 15905-TRAV, 03-1 BCA ¶ 32,126, at 158,812 (2002). Central to the board's reasoning was the fact that this did not involve the typical case where an employee was rerouting official travel solely for personal convenience. The need to travel arose after she had planned her trip to Memphis, and her supervisor authorized her to fly directly from Memphis to Syracuse and back to New York City at Government expense to accommodate the Government's need to have her appear in court. Ms. Franklin-Thomas, relying on this authorization, undertook the travel with the expectation that she would be reimbursed.

The primary factual distinction between the two cases interpreting the FTR discussed above and Mr. Jacob's claim is that Mr. Jacob, unlike Mr. Davis, whose travel from Shreveport was approved from outset, and Ms. Franklin-Thomas, whose travel from Memphis to Syracuse was approved at the time the need for travel to Syracuse arose, had already been given travel orders routing him from BWI to Alaska and back. In the earlier cases, there were no travel orders initially issued from the PDS that were changed to accommodate the traveler.

The Navy and DFAS, relying on the JTR provisions, reasoned that since Mr. Jacob's travel was scheduled and authorized before the occasion arose for his travel to Jacksonville, the regulations expressly precluded his departure from Jacksonville, even though his immediate supervisor approved and authorized the travel, and Mr. Jacob, relying on that approval, undertook the travel so as to be able to perform this critical TDY assignment. Thus, in the case of civilian employees of the Defense Department, a strict construction of the pertinent JTR provision would dictate that any discretion provided within the FTR to approve departure from a non-PDS at Government expense is removed from the command level and precluded across the board within the Defense Department. Although neither the Navy nor DFAS believe the result is fair to the employee in these circumstances, they cannot perceive a basis to approve the added expense.

The conclusion arrived at by DFAS and the Navy is the right one. Upon reviewing the *Davis* and *Franklin-Thomas* cases, which were decided solely under the FTR provisions, without reference to the JTR's expression of the rule, we now conclude that the rationale underlying these cases is partly, but not entirely, correct. That is, we agree that a travel approving official may always permit departure from or return to a location other than the

PDS to accommodate an employee. We disagree, however, that this includes the discretion to bind the Government to pay the added costs, as the board held in those two cases. As currently written, the pertinent regulations dictate a contrary conclusion. Both of these regulations define the direct, or non-circuitous, route to start and end from the PDS. When travel orders authorize a departure from (or return to) a non-PDS location simply because that is where the employee will be when TDY travel must commence, the proper analysis must recognize that this is, in fact, an indirect route. At some point the employee left the PDS or will return to the PDS. To use the instant case as an example, the employee left his PDS to arrive at the non-PDS departure point, Jacksonville, prior to undertaking official travel. It begs the question to ignore this leg of the trip solely because the supervisor was willing to authorize travel to commence from Jacksonville. By definition, this was a circuitous, or indirect, route.

Thus, to the extent that the *Davis* and *Franklin-Thomas* cases hold that the Government can be bound to pay for indirect or circuitous travel originating or ending at a non-PDS location, if the approving official authorizes it in advance of the travel, we will no longer follow that reasoning.

Accordingly, with respect to this claim, we find that DFAS and the Navy properly concluded that, while the approving official could authorize departure from a non-PDS location to accommodate an employee's personal circumstances, the Government has no authority to incur the added cost associated with this revised route. It is unfortunate that Mr. Jacob traveled with the expectation that his costs would be fully reimbursed. Nonetheless, erroneous authorizations or incorrect advice provided by Government officials cannot create or enlarge entitlements that are not provided by statute or regulation. *See, e.g.*, *Joseph E. Copple*, GSBCA 16849-RELO, 06-2 BCA ¶ 33,332, at 165,290 (citing *Federal Crop Insurance Corp. v. Merrill*, 322 U.S. 380, 384-85 (1947)).

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CATHERINE B. HYATT
Board Judge