



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 14, 2009

CBCA 1343-TRAV

In the Matter of EDWARD J. ZEHLER

Edward J. Zehler, Baltimore, MD, Claimant.

Julie Schechter Torres, Executive Director, Overseas Buildings Operations, Department of State, Arlington, VA, appearing for Department of State.

KULLBERG, Board Judge.

Claimant, Mr. Edward J. Zehler, a civil service employee of the Department of State's (DoS's) Bureau of Overseas Buildings Operations, seeks to recover the amount that the actual cost of his lodging while on temporary duty (TDY) in Nairobi, Kenya, exceeded the per diem rate over a seven day period. Mr. Zehler's travel orders authorized reimbursement at the per diem rate, and he has not shown that his reimbursement was insufficient. The Board denies the claim.

Background

Mr. Zehler was issued TDY orders for travel to the United States embassies in Kenya and Burundi from February 29 to March 15, 2008. The purpose of Mr. Zehler's travel was to review vehicle safety programs at those embassies. Mr. Zehler's travel orders provided for the prevailing per diem rates during his TDY in Nairobi, Kenya, of \$167 for lodging and \$101 for meals and incidental expenses (M&IE).

Upon his arrival at the United States Embassy in Nairobi, Mr. Zehler was advised that the cost of the hotel that had been selected for him was \$199 per night, which exceeded the

per diem rate for lodging of \$167. Mr. Zehler received from the embassy a January 28, 2008, memorandum that stated: “This is to notify you that all hotels in Kenya are above our current USG per diem rate. Please note all travelers headed to Kenya should be authorized actual lodging.”

After returning to the United States, Mr. Zehler submitted a travel claim in which he claimed the actual cost of his hotel in Nairobi for March 1 and March 8-13, 2008. The difference between the per diem rate for lodging, \$167, and the actual cost, \$199, for seven nights in Nairobi totaled \$224. Mr. Zehler’s claim for travel expenses did not show an itemization of his actual costs for M&IE while in Nairobi. Instead, his claim showed the per diem rate of \$101 for M&IE. Mr. Zehler has represented that he did not keep a record of his actual expenses for M&IE.

A memorandum from Mr. Zehler’s supervisor to the managing director of the Office of Operations and Maintenance, which was dated March 27, 2008, recommended that his travel orders be amended to allow reimbursement for his actual costs incurred while on TDY in Nairobi. The memorandum noted that Mr. Zehler was “charged \$199.00 per day for lodging, which was selected by post.” Mr. Zehler was not reimbursed for his actual lodging expenses in Nairobi. Instead, he was reimbursed at the per diem rate of \$167 for lodging and \$101 for M&IE for that portion of his TDY in Nairobi, and he has brought this case seeking reimbursement of the amount that his lodging expenses exceeded the per diem rate.

Discussion

The issue in this matter is whether DoS was required under the applicable travel regulations to reimburse Mr. Zehler for his increased travel expenses. As a civil service employee of DoS, Mr. Zehler is subject to the Federal Travel Regulation (FTR), which “applies to official travel of civilian employees of all agencies of the executive branch of the Government—including . . . the Department of State.” *David K. Leonard*, 14334-TRAV, 98-2 BCA ¶ 29,882, at 147,938. He is also subject to the Foreign Affairs Manual (FAM), a DoS regulation. 14 FAM 571.2(a).

The FTR provides for reimbursement on a lodgings-plus per diem basis in which an employee who travels for more than twelve hours overnight is “reimbursed [his or her] actual lodging cost not to exceed the maximum lodging rate for the TDY location or stop-over point.” 41 CFR 301-11.100 (2007) (FTR 301-11.100). The FAM also “has a uniform worldwide lodgings-plus per diem computation system for all official travel, based on travel inside and outside the continental United States.” 14 FAM 571.1. Under the FAM, reimbursement for expenses incurred on TDY is at the per diem rate unless subsistence on actual expenses is approved. *Id.* 571.2(b).

The FAM provides that DoS will reimburse the actual subsistence expenses incurred by an employee on TDY, rather than making a per diem payment, only “when, due to special or unusual circumstances of the assignment, the maximum locality per diem rate would be much less than the amount required to meet the necessary subsistence expenses of the traveler.” 14 FAM 576.1(b). “Normally, authorization to travel on an actual subsistence expenses basis is limited to cases where the cost of lodging (exclusive of meals) absorbs all or practically all of the maximum locality per diem rate[,] and the traveler has no alternative but to incur such costs.” *Id.* 576.1(c). “Authority to receive reimbursement of actual subsistence expenses must be included in the travel authorization or in an amendment thereto.” *Id.* 576.1(e).

DoS properly declined to reimburse Mr. Zehler’s actual lodging expenses in light of the above-cited FAM provisions. Mr. Zehler has not shown that his increased cost of lodging absorbed all or practically all of his per diem. His per diem rate of \$167 for lodging plus his per diem rate of \$101 for M&IE totaled \$268. Even with Mr. Zehler’s total per diem of \$268 reduced by the increased lodging expense of \$199, he still would have had the difference between those two amounts, \$69, for meals and other incidental expenses each day. Although his actual lodging expense exceeded the lodging per diem rate, the increased cost of his lodging could not reasonably be deemed to have absorbed all or practically all of his total per diem under those circumstances. Mr. Zehler was authorized reimbursement at the per diem rates for lodging and M&IE, and the Board, consequently, does not find that DoS was required to further reimburse Mr. Zehler for his additional lodging expenses.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge