



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 3, 2010

CBCA 1617-TRAV

In the Matter of NINA ROBERTSON

Nina Robertson, Cochabamba, Bolivia, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Springfield, VA, appearing for Department of Justice.

GILMORE, Board Judge.

Nina Robertson (claimant) seeks reimbursement of \$6234.74 for travel expenses incurred by her husband during his authorized departure (AD) evacuation from Bolivia in October of 2008. At the time of her husband's travel, claimant was a civilian employee with the Department of Justice (DOJ), Drug Enforcement Administration (DEA or agency). She has since retired. The DEA denied the reimbursement for travel on the basis that the travel, although approved by the DEA Regional Director, had later been denied by the United States Ambassador to Bolivia (Ambassador).¹ Given the specifics of this case, we find that the travel was properly authorized and the claimant is entitled to reimbursement of allowable expenses incurred by her husband under the travel order.

Background

During mid-September 2008, there was continuous violence and political unrest in Bolivia with the possibility of an attack on the United States Embassy. A telegram, initiated by the Ambassador, requested the following from the Department of State (DOS) Under Secretary for Management:

¹ The Ambassador is also referred to as the Chief of Mission (COM).

[T]he Ambassador requests . . . authorized departure for non-essential employees and eligible family members (EFMs), and delegated authority to approve travel of employees and family members at post who do not elect authorized departure.

. . . .

The Ambassador requests . . . that the Department delegate to the [Ambassador] the authority to approve personal or official travel of employees and EFMs who are not at post when departure is authorized and who have not elected to leave under authorized departure.

On September 12, 2008, the DOS Under Secretary for Management responded, by ordering an evacuation of personnel in Bolivia and stating:

Effective the date of this telegram, I hereby approve authorized departure (AD) from Bolivia of eligible family members (EFMs) and employees you determine to occupy positions that are not considered essential in an emergency situation (non-emergency personnel).

Among other things, the telegram approved travel and subsistence expenses for all EFMs leaving Bolivia under the AD. On October 10, 2008, the Under Secretary for Management approved the extension of the AD until November 11, 2008.

Claimant's husband, a Canadian National, who was in the process of applying for a United States permanent residence card, needed to travel to the United States to get his passport validated. Claimant was told by the DEA Administrative Officer (AO) for travel that her husband had to travel under the AD authority and was told to submit Form DOJ-501. On October 15, 2008, claimant submitted Form DOJ-501, Official Travel Request and Authorization (DOJ-501), for her husband's travel. On that same date, the AO forwarded to the DOS Chief Logistics Officer an unnumbered form titled "Authorized Departure Request" noting the "Date of departure from post and ETA at safehaven: October 20, 2008." The form was initialed as approved by the DEA Regional Director (RD), La Paz County Office. On October 17, 2008, the DEA RD also signed the DOJ-501 authorizing travel for claimant's spouse from Cochabamba, Bolivia to Phoenix, Arizona.

Claimant states that the AO called her on October 17, 2008, and told her that it was "OK for [her] husband to travel," and that the DOJ-501 authorization had been signed and the funding approved. The AO attests that she advised claimant that her husband's travel request had been signed but it was pending approval by the Ambassador's office. Claimant

asserts that the AO never informed her that her husband should not travel, or that there was a possibility that he might not be able to leave.

The completed “Authorized Departure Request” form shows the DEA RD as approving the AD request, and the Deputy Chief of Mission (DCM) and Ambassador ultimately disapproving the AD request. As the form contains no dates other than October 15, 2008, it is unclear when the form was received and disapproved by the DCM and Ambassador or returned to the DEA RD/AO. The agency was unable to provide any information as to when the request was denied.

Claimant’s husband departed Cochabamba on October 20, 2008, and flew to Phoenix from Santa Cruz, Bolivia, on October 21, 2008. The AD was lifted on October 27, 2008, and employees were notified on October 28 that they were permitted to return to post. The earliest flight claimant’s husband could secure for his return to Bolivia was on November 4, 2008. Claimant submitted a voucher on November 18, 2008, for reimbursement of her husband’s travel expenses in the amount of \$6234.74. The agency denied the claimed expenses because the DCM and Ambassador denied the “Authorized Departure Request.” On June 18, 2009, claimant asked the Board to review DEA’s denial of her claim.

Claimant states she first learned about a problem with her husband’s travel on October 29, 2008, when she received a copy of an e-mail dated October 28, 2008, addressed to the DEA Group Supervisor which stated that DOS had not approved her husband’s travel.

Discussion

During an AD evacuation federal agencies are tasked with cooperating to the maximum extent possible with DOS. 22 U.S.C. § 4805 (2006). On November 12, 2004, DEA issued Division Order OIDO-00-09, Foreign Post Evacuation Plan, to provide a plan of action for the evacuation of DEA employees and their eligible EFMs “who have been authorized or ordered to depart from a foreign post.” Among other things, the order provides that “[DOS] determines the need for an evacuation; authorizes or orders a departure from post; approves all personnel departures and returns; determines safehaven; and lifts the evacuation.” The “Ambassador (Chief of Mission) recommends to [the] Under Secretary personnel for departures and returns . . . [and] in unusual situations may order an evacuation . . . through the Regional Security Officer (RSO).” The order tasks the DEA country office involved in the evacuation with issuing accounting classifications for evacuating employees and EFMs. On March 12, 2008, DEA issued Division Order OIDO-00-14, Foreign Post Evacuation and Threatened Employee/Family Member Allowances, to establish subsistence, transportation, and miscellaneous allowances when relocation of DEA employees and eligible EFMs is necessary due to an AD or ordered departure. The order states “When an

evacuation is Authorized or Ordered by the Under Secretary of State for Management or the Chief of Mission . . . evacuation allowances found in DSSR 600 will be authorized for EFM.”²

It is difficult to ascertain from the information submitted by the agency in its response to the claim exactly what AD processes were in place at the post during the time in issue. Departures from post during an AD must be approved by DOS or the Ambassador. However, the DOS Under Secretary for Management’s September 12, 2008, telegram specifically approved travel for EFMs leaving Bolivia under the AD. This approval was subsequently extended until November 11, 2008. Based on the record developed here, we conclude that, in this matter, DOS approval was granted, and no further DOS approval was needed by the DCM or Ambassador for claimant’s husband’s travel.

If some form of additional DOS approval was required, this approval (or disapproval) should have been clearly stated in the regulations and forthcoming prior to the October 20 departure date set forth in the “Travel Authorization Request.” There is no indication in the record as to when the “Travel Authorization Request” was denied or on what grounds.

The DOJ-501 was signed without any stated conditions, and was in compliance with the evacuation order. We find claimant’s statement, that she was told on October 17, 2008 that her husband’s travel had been approved, to be credible. Here, the travel authorization established the conditions, in writing, under which official travel and transportation were authorized at government expense, and provided a notice and record of the authorizations and entitlements. *Jack J. Pagano*, CBCA 1838-TRAV, 10-1 BCA ¶ 34,408. “The travel authorization is a record of vested travel entitlements and may not be administratively altered after the fact to increase or decrease benefits in the absence of clear error.” *William T. Cowan, Jr.*, GSBCA 16525-TRAV, 05-1 BCA ¶ 32,906, at 163,033 citing *Andre Long*, GSBCA 14498-TRAV, 98-1 BCA ¶ 29,731).

² DSSR 600 is the DOS Standardized Regulation for Payments During Evacuation/Authorized Departure. DOJ/DEA has adopted this regulation. The order also referenced DEA Agents Manual 6115, Threats Against DEA Employees, and the Federal Travel Regulation (FTR).

Decision

In light of the above, we find that the DOJ-501 travel authorization was a valid order, and claimant is entitled to reimbursement of allowable expenses incurred by her husband under this order. We return this matter to DEA to determine whether the expenses claimed are otherwise allowable.

BERYL S. GILMORE
Board Judge