



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 14, 2010

CBCA 2072-TRAV

In the Matter of MARK T. STEPHENSON

Mark T. Stephenson, Norfolk, VA, Claimant.

Anne Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Department of the Army, Millington, TN, appearing for Department of the Army.

POLLACK, Board Judge.

Mark T. Stephenson, an employee of the Army Corps of Engineers (Corps), seeks compensation for the cost of lodging incurred in the midst of rest and recuperation leave (R&R) travel. Additionally, he seeks lost wages. The basic facts of this case are that the claimant proceeded on R&R travel from a temporary duty (TDY) assignment in Afghanistan in December 2009. The agency's contracted travel office made an error in the scheduling of his return flights, and through no fault of the claimant, the error resulted in him arriving at his transfer point in Dubai almost two hours after his scheduled transfer flight from there to Afghanistan had already departed. He was then booked on another connecting flight; however, that flight was not scheduled to leave until well in excess of twenty-four hours later. Rather than spending that time attempting to sleep and shower at the Dubai airport, the claimant secured a hotel room. Claimant requested reimbursement of \$172 for the two nights' lodging. His request for reimbursement was turned down by the Corps of Engineers on the basis that under the Joint Travel Regulations (JTR), Department of Defense (DoD) civilian employees in Iraq or Afghanistan are authorized only transportation expenses (no per diem) associated with R&R Travel. The cited section provides:

C7751 IRAQ AND AFGHANISTAN

A. Authorized Transportation. The provision for transportation for a DoD civilian employee on official duty in Iraq or Afghanistan during fiscal years

2006, 2007 and 2008 has been continued through fiscal year 2011. The employee is authorized round trip transportation to the designated locations provided in APP [Appendix] U. Provisions in Ch 7, Part O must be applied when requesting and authorizing R&R travel. An employee must be in an approved leave status while traveling to/from Iraq or Afghanistan and during R&R breaks, IAW [in accordance with] DoD 1400.25-M.

B. Authority. OSD (P&R) [Office of the Secretary of Defense (Personnel and Readiness)] memo dated 20 October 2008 and authority provided by P.L. 110-417 continued benefits, allowances, and gratuities authorized based on OSD (P&R) memo of 4 May 2007 and under the authority provided by P.L. 109-234 and 22 USC § 4081(6), a DoD civilian employee in Iraq or Afghanistan is authorized transportation expenses (but no per diem) associated with R&R as follows:

The provisions which follow the above deal with the timing of such trips and as such are not germane to the claim for reimbursement before us. In denying the claim, the Corps focused on the wording “but no per diem” as set out in parenthesis in C7751-B.

After some back and forth correspondence, with the Corps denying reimbursement, claimant has now sought recovery at this Board. In seeking relief from the Board, claimant not only has sought reimbursement for the lodging, but has also requested an additional \$191.78, which claimant has described as lost pay (due to the delay in his getting back to Afghanistan).

Discussion

There are some limited instances where circumstances are simply not directly addressed through regulation. Here we have a situation where a government ticketing error resulted in the employee missing his flight connection, causing him to have to remain at the transfer site for an additional twenty-four hours plus. There is no dispute that the delay was due to no fault of claimant. There is further no dispute that his decision to secure lodging was reasonable. Claimant seeks compensation for the unplanned lodging costs he incurred during a time frame that was added to his travel because of an administrative error.

Common sense dictates that absent a specific prohibition fitting this situation, the claimant should be reimbursed for costs he incurred, as the costs were the result of a government administrative error. While the regulation relied on by the Government can be broadly read to exclude lodging costs (under any circumstances), we do not find that such a broad reading is necessarily mandated in every instance. We find that particularly to be the case here, where the regulation relied upon by the Government does not contemplate the situation presented in this case. As we see it, the prohibition in the regulation is aimed at

assuring that in putting a travel order together, the issuing authority includes only costs associated with the transportation (getting from one point to another) and does not include costs of lodging, meals, and incidental expenses. The regulation simply does not address unplanned expenses incurred due to a government error. Moreover, we find it noteworthy that the regulation relied upon by the Corps cites 22 U.S.C. § 4081(6) as a basis for allowing R&R payments to DoD employees. That statute (which applies to the Foreign Service, but nevertheless is cited in the JTR as authority) contains no restriction on per diem and in fact states in its introductory paragraph, “The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for (1) proceeding to and returning from assigned posts of duty.” Thus, at least in the cited authorizing statute, related expenses of travel are specifically allowed.

The above said, we recognize that in this case, any decision we make must address the specific JTR provision relied upon by the Government and our decision cannot rest solely on the overall statutory framework. With that understanding, however, when we apply JTR C7751 to the facts of this case, we simply do not find that the prohibition relied upon by the Corps logically applies or was intended to apply to reimbursements for an unplanned airport stop caused by a government administrative error.

Further and while not directly on point, we find support for our conclusion in two Comptroller General (CG) decisions, *John T. Davis*, B-216633 (Mar. 27, 1985), and *Patrick G. Orbin*, B-215550 (Oct. 23, 1984). In each of those cases, the employee had incurred added ticketing costs due to an administrative error causing the employee to initially make a wrong connection. In each instance, the CG allowed reimbursement for the added travel costs, even though the costs exceeded the costs that would have otherwise have been allowable.

Accordingly, under the specific circumstances of this case, we allow the \$172 claimed for lodging.

As to the additional claim for lost pay, the awarding of such a claim is outside the jurisdiction of this Board. Accordingly, the claim is dismissed.

HOWARD A. POLLACK
Board Judge