



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 16, 2010

CBCA 1887-TRAV

In the Matter of ROBERT L. SHOTWELL

Dr. Robert L. Shotwell, Spotsylvania, VA, Claimant.

Douglas H. Hilton, Office of General Counsel, Corporation for National & Community Service, Washington, DC, appearing for Corporation for National & Community Service.

STERN, Board Judge.

Dr. Robert L. Shotwell, claimant, seeks to block the demand for repayment of \$17,861.43 of travel expense payments issued to him by the Corporation for National & Community Service (CNCS). The CNCS is a United States government agency and Dr. Shotwell was a full-time government employee at the time that CNCS paid him the travel expenses at issue.

Background

Claimant negotiated the terms of his employment with the chief information officer (CIO) of CNCS during July 2009. The position claimant accepted required some work in Washington, D.C., at the headquarters of CNCS, but both claimant and CNCS believed that the majority of claimant's work could be accomplished from his home office in Spotsylvania, Virginia, approximately seventy miles from CNCS headquarters. During the negotiations with CNCS, claimant requested that he be reimbursed for travel costs in addition to any agreed upon salary. The CIO informed claimant that travel expenses would be reimbursed through the "normal government travel process." CNCS hired claimant with the intent that he would work from his residence for the major portion of the project. Claimant accepted the full-time temporary employee position with CNCS, commencing July 20, 2009, for a period not to exceed ninety days. During the course of his employment,

the period of performance was extended to the end of January 2010 (with a somewhat different job assignment). The duty station that was set forth on claimant's standard form 50 (the Government's official employment form) was Washington, D.C. The various travel vouchers involved in claimant's trips also listed Washington, D.C., as his official duty station.

At the commencement of claimant's employment, CNCS notified him in writing that it had made travel arrangements to Washington, D.C., including hotel reservations, for claimant's first week of work, July 19 through July 24, 2009. Thereafter, claimant began a regular pattern of working at the Washington, D.C., office of CNCS two or three days a week. On the occasion of each trip to Washington, D.C., claimant submitted a travel approval request through CNCS's travel system. Claimant submitted vouchers and receipts, and was reimbursed for each trip. Claimant continued to travel to Washington two to three days per week until the end of November 2009, when he was informed by CNCS's office of the inspector general that payments to him may be in violation of travel policy and regulations. Subsequent to this, claimant canceled his additional travel plans, and with the exception of January 2010, performed his work assignments from his house in Spotsylvania. Claimant submits that he made several single-day trips to the CNCS headquarters during January 2010, but did not file a travel voucher.

Claimant received an e-mail message on January 19, 2010, from CNCS attaching two letters, the first of which stated:

[Your travel expense reimbursements were] for travel designating that your official duty station was Washington, DC. Nonetheless, each voucher includes per diem amounts for staying in Washington, DC, and transportation charges for use of your privately owned vehicle to travel from your home in Spotsylvania, VA, to your official duty station in Washington, DC.

The letter further informed claimant that, CNCS's travel policy states that generally an area within a fifty-mile radius of an employees work location is considered local travel, or in the employee's commuting area. (Claimant's home was in excess of fifty miles from CNCS's headquarters.) The letter concluded that under the regulation, claimant should not have been paid his travel expenses between his home and the CNCS headquarters.

The second letter from CNCS attached to the e-mail message stated that \$17,861.43 was due the CNCS and that the amount was a debt that must be repaid under "federal claims collection standards (31 CFR Parts 900 to 904) and [CNCS's] claims collection regulations (45 CFR part 2506)." Claimant was further advised that whereas he could normally request a CNCS review of the debt, since the only debt involves a claim for travel expenses, this Board must settle the debt.

Discussion

Claimant argues that CNCS's action violates the terms of his employment agreement (that he was assured his travel expenses would be paid), that it was an error to designate Washington, D.C., and not his home in Spotsylvania, Virginia, as his duty station, and that he was led to believe through CNCS actions that his travel vouchers were valid and payable. CNCS claims that Washington, D.C., was claimant's correct duty station. CNCS further submits that, based on his hours worked, if claimant's duty station was Spotsylvania, claimant was in a travel status for sixty-two percent of his work time. (It is unclear whether this computation was made based on his hours of work through November 2009, the time of the audit, or through the end of claimant's work with CNCS in January 2010.)

An employee's usual commute between his home and work (his duty station) does not constitute official business travel. *Carrie L. McWilliams*, GSBCA 15028-RELO, 99-2 BCA ¶ 30,497; *see* 5 U.S.C. 5792(a)(1) (2006). The Federal Travel Regulation defines the official station of an employee as the location of the employee's permanent work assignment. 41 CFR 300-3.1 (2009). Here, claimant's official station is listed as Washington, D.C. However, the papers processed by an agency are not conclusive proof of an employee's official station of employment. *See Tracy Jones*, GSBCA 15659-TRAV, 02-1 BCA ¶ 31,687 (2001). A duty station is determined from the surrounding circumstances of an employee's hiring and work situation. *Michael A. Stirber*, CBCA 1271-TRAV, 08-2 BCA ¶ 34,006. An important factor to be considered is the parties' expectations as to where the employee is expected to spend the greater part of his time. *Id.*; *John P. DeLeo*, GSBCA 14042-TRAV, 97-2 BCA ¶ 29,156.

It is undisputed that at the time of hiring, both claimant and CNCS expected claimant to spend the greater portion of his time at his home in Spotsylvania, Virginia. The expectation was that claimant would need to spend nominal time at the CNCS headquarters in Washington, D.C., and that any travel costs to the headquarters would be reimbursed. Claimant's home was outside the fifty-mile commuting area established in CNCS's regulation. The facts demonstrate that both claimant and CNCS entered the employment arrangement with the belief and understanding that claimant would perform the majority of his work from Spotsylvania. We find that the surrounding circumstances demonstrate that claimant's official duty station was his home in Spotsylvania, Virginia. It was an error for CNCS to list Washington, D.C., as his official station on his standard form 50 and on other travel documents. Since Spotsylvania, Virginia, was his official duty station, claimant was entitled to be paid for the costs of his travel to Washington, D.C., to perform official duties.

The amounts he has been paid need not be reimbursed to the agency.

JAMES L. STERN
Board Judge