



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 26, 2010

CBCA 1899-TRAV

In the Matter of TERRIS KING

Terris King, Baltimore, MD, Claimant.

Maria C. Montilla, Director, Accounting Management Group, Office of Financial Management & Centers for Medicare & Medical Services, Senior Travel Official, Baltimore, MD, appearing for Department of Health and Human Services.

VERGILIO, Board Judge.

The claimant, Terris King disputes the agency's determination that he has been over-reimbursed for temporary duty (TDY) assignment expenses and must repay the Government \$3640.59. The Department of Health and Human Services (agency) arrives at this figure by totaling amounts paid to the claimant which it deems to be non-reimbursable for personal travel by indirect routes, for duplicate or unsubstantiated claims, and for expenses that were not approved for official travel. Because the Board concludes that the agency appropriately has determined the liability of the claimant, the Board denies the claim.

As an employee of the Department of Health and Human Services, Centers for Medicare and Medicaid Services, the claimant traveled on various temporary duty assignments. The incidents of TDY travel underlying this claim occurred in 2006, 2007, and 2008. The agency audited several of the claimant's travel reimbursements. At issue here are various costs associated with fifteen TDY assignments. The agency relies upon applicable provisions of the Federal Travel Regulation (FTR), 41 CFR Chapters 300, 301, and its manuals (which contain policy and guidance supplemental to the FTR), HHS Travel Manual (2005) (effective prior to May 2008) and HHS Travel Manual (2008) (effective May 2008).

The claimant states that his appeal is based on incorrect conclusions drawn by the agency, the notion that other individuals are responsible for and should be liable for amounts found due, and the context of the request. As to "the context," the claimant explains that

because official audits and reviews did not occur earlier to inform the claimant of unallowable costs and inappropriate actions, others, not the claimant, should be liable for repayment of amounts found due. Further, the claimant mentions the cost to him of resolving his travel claim disputes, as he states that he utilized an attorney to resolve these and related situations. While the claimant has provided few specifics of incorrect conclusions, calculations, assumptions, or determinations, the Board has reviewed the record. Although the agency's breakdown of dollar liabilities into various categories is not always exact, the record ties each dollar of indebtedness to a payment made contrary to regulation.

Indirect Travel for Personal Reasons

In nine instances here in dispute, the agency has required the claimant to reimburse the Government for indirect travel charges in excess of the direct travel charges that the claimant would have incurred had he departed from and returned to his duty station instead of utilizing an indirect route for personal reasons.

Regulation specifies that travel must be by the usually traveled route unless the agency authorizes or approves a different route as officially necessary. FTR 301-10.7. Further, an employee's reimbursement is limited to the cost of travel by a direct route or on an uninterrupted basis. The employee is responsible for additional costs. FTR 301-10.8. Consistent with the FTR, the HHS Travel Manuals set forth the agency's policies regarding the method and routing of transportation and a traveler's potential liability:

Employees who for personal convenience travel by an indirect route or interrupt travel by a direct route are personally liable for any additional costs. In the case of indirect or interrupted travel, reimbursement cannot exceed the constructive cost of direct routing or the actual cost of travel, whichever is less.

HHS Travel Manual (2005) at 75 (¶ 4-00-30.A). Similarly,

The HHS travel authorizing official should only authorize travel to and from official duty destination points. If an employee travels by an indirect route or interrupts travel by a direct route for personal convenience, reimbursement will be limited to the cost of travel by a direct route or on an uninterrupted basis and the employee will be responsible for any additional costs. Refer to Section 4.1.3: *Procuring Common Carrier Transportation*, and Section 4.1.4: *Mandatory Use of Contract Fares and When Contract Fares May Not be Used*, for additional information about indirect or interrupted travel for personal convenience.

HHS Travel Manual (2008) at 84 (§ 4.1.2.1). A separate provision reads:

Employees must travel to and from their official destination points by the usually traveled route. Employees who for personal convenience travel by an indirect route or interrupt travel by a direct route are personally liable for any additional costs. In the case of indirect or interrupted travel, reimbursement cannot exceed the constructive cost of direct routing or the actual cost of travel, whichever is less.

HHS Travel Manual (2008) at 85 (§ 4.1.3.2).

As the agency explains, the agency “does not deny [the claimant] his choice to change his reservations to travel indirectly for personal reasons; however, it is denying the reimbursement of the additional costs incurred as a result of the indirect travel.” In determining the claimant’s liability, the agency used “the historical records of the reservations in question to identify the original flight information, costs, and comments related to the reservation changes.”¹

For the travel identified by the agency, the claimant traveled by indirect route for personal reasons. Under regulation and implementing manuals, the claimant is liable for costs in excess of what would have been incurred for uninterrupted, direct route travel. The agency properly has calculated amounts to be repaid.

Rental of Navigation System (GPS)

On eight occasions while on travel, for a surcharge, the claimant rented a navigation system in addition to a vehicle. The claimant lacked express authorization to expend

¹ While not here at issue, as there is no indication that the Government is seeking to recoup the savings that the claimant enjoyed, the agency correctly notes that the claimant should not have obtained Government rates for the airfares obtained for personal travel. FTR 301-10.110. The agency’s manuals explicitly state the prohibition: “GSA contract airfares may not be authorized for personal travel by employees. Personal travel includes when an employee, for personal convenience, travels by an indirect route or interrupts travel by a direct route on an official travel assignment. Employees who choose to travel by an indirect route for personal convenience may not obtain Government contract fares for the indirect route portions of their trip, which are considered personal travel.” HHS Travel Manual (2005) at 78 (§ 4-00-40.B.2); HHS Travel Manual (2008) at 88 (§ 4.1.4.2).

additional funds for the rental of a navigation system; the agency has paid for vehicle rental and does not seek reimbursement of those amounts.

Reimbursable expenses are actual expenses that the agency determines to be necessary. FTR 301-10.401. Further, the agency must determine that the use of a rental vehicle is advantageous to the Government and must specifically authorize such use. FTR 301-10.450. Moreover, an employee is responsible for any additional cost resulting from the unauthorized use of a commercial rental automobile for other than official travel-related purposes. FTR 301-10.453.

Because the claimant lacked authorization for these expenditures in question, which the Government has identified and accurately totaled, the claimant is liable for the related amounts.

Non-Contract Carrier

On one occasion in dispute, the claimant utilized a non-contract carrier, without authorization. The claimant requested and was reimbursed for the non-contract fare, which is in excess of the contract carrier fare that would have been incurred. The Government seeks repayment of the amount paid in excess of the contract carrier fare.

Regulation directs that an employee is liable for any additional costs incurred resulting from unauthorized use of non-contract services when contract service is available and an exception for required use is not met. FTR 301-10.109. The applicable manual specifies:

If the GSA city-pair contract fare for passenger transportation services is available to an employee for official travel, the employee must use the contract carrier unless one or more of the exceptions listed in FTR 301-10.107 applies. The employee is personally liable for any additional costs or penalties incurred resulting from unauthorized use of non-contract service.

HHS Travel Manual (2005) at 77 (¶ 4-00-40.A).

Under the FTR and manual, the claimant is liable for the excess fare paid by the Government. The claimant lacked authorization; the record does not indicate that the claimant has satisfied a criterion in the list of exceptions to use of the city-pair fares. The Government properly seeks repayment of the excess fare.

Overpayment for Lodging, Meals and Incidental Expenses, and Other Expenses

The agency has identified various instances when the claimant has been reimbursed for unsubstantiated or duplicate claims. For example, on occasions the claimant shortened his travel, but claimed and was reimbursed for lodging, and/or meals and incidental expenses, and/or parking when not on TDY. Similarly, the claimant has been reimbursed for duplicate lodging expenses, dual lodging, and parking for given nights. Further, the claimant has been reimbursed finance charges, fees, and costs arising from indirect, personal travel (e.g., fees for changing flights from official destinations to those for personal reasons) which have not been shown to be authorized and necessary for official travel.

An “agency may pay only those expenses essential to the transaction of official business.” FTR 301-2.2. An employee is eligible for payment of transportation expenses when performing official travel. FTR 301-10.1. An employee is eligible for an allowance (per diem or actual expense) when and while performing official travel. FTR 301-11.1. An “agency will not pay for excess costs resulting from circuitous routes, delays, or luxury accommodations or services unnecessary or unjustified in the performance of official business.” FTR 301-2.4.

The record demonstrates that the agency has considered the claims associated with each TDY assignment, and has found instances when aspects of the payments were not supported. The agency has correctly concluded that the claimant must repay the Government for the various amounts not associated with official business or not supported as authorized and necessary.

Attempt to shift liability

The claimant’s attempts to shift liability away from himself are not sustainable. Throughout the period of travel, the applicable regulations expressly establish limits on expenses an agency may pay and identify the responsibilities of the employee-traveler. Specifically, an “agency may pay only those expenses essential to the transaction of official business,” which include transportation, per diem, and miscellaneous expenses as provided in the regulation. FTR 301-2.2. Regarding the liability of the employee-traveler, the regulation states:

You are responsible for expenses over the reimbursement limits established in this chapter. Your agency will not pay for excess costs resulting from circuitous routes, delays, or luxury accommodations or services unnecessary or unjustified in the performance of official business.

FTR 301-2.4. As noted above, the agency's applicable manual specifies that the claimant is personally liable for excess charges. The claimant is not absolved from liability because he may have received incorrect or misleading advice, or made incorrect assumptions or lacked knowledge of the regulations and agency policies.

The claimant received for his travels some payments which were contrary to regulations and agency policies. The claimant, not his administrative staff or supervisors, is liable for travel costs incurred outside of the regulations. The Government has the right and responsibility to review travel claims, and to collect payments that were made in excess of those permitted by regulations. *Robert L. McCall*, CBCA 1247-RELO, 08-2 BCA ¶ 33,998 ("The statute and implementing regulations preclude payment of these expenses, even in those situations where both the employee and his agency advisors mistakenly believed the costs could be reimbursed"); *Emily G. Gibson*, CBCA 1160-RELO, 08-2 BCA ¶ 33,946 ("It is well established that incorrect advice provided by government officials cannot create or enlarge entitlements that are not provided by statute or regulation.").

Conclusion

The Board concludes that the claimant must repay the Government the entire amount which it seeks, \$3640.59.

JOSEPH A. VERGILIO
Board Judge