



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 17, 2010

CBCA 2123-TRAV

In the Matter of PAUL R. DANLEY

Paul R. Danley, Euless, TX, Claimant.

Curtis L. Greenway, Attorney Advisor, United States Army Criminal Investigation Command, Department of the Army, Fort Belvoir, VA, appearing for Department of the Army.

WALTERS, Board Judge.

Claimant, Paul R. Danley, a special agent with the United States Army Criminal Investigation Command (CID), Major Procurement Fraud Unit (MPFU), Arlington, Texas, challenges the agency's decision regarding his entitlement to per diem meals allowance while he was on temporary duty (TDY) assignment in Kuwait. For the reasons explained below, the claim is granted.

Background

In January 2010, claimant volunteered for an extended TDY assignment to the Kuwait Fraud Detachment, Kuwait, to support the Department of Justice International Contract Corruption Task Force. On January 22, 2010, he received travel orders providing for payment of per diem for meals and incidental expenses (M&IE) at the full locality per diem rate for Kuwait (\$109/day) for the entire duration of his TDY. On February 4, 2010, the MPFU Director confirmed to the claimant that he would receive the full rate per diem while on TDY. Claimant arrived in Kuwait on February 15, 2010, and was directed to reside at an agency-funded, off-post apartment located thirty minutes from Camp Arfijan (near Kuwait City), where most of his work was to be performed.

On February 16, 2010, claimant received an agency email message informing him that his per diem for M&IE had been reduced to the incidental expenses (IE) rate of \$3.50/day. Claimant's travel orders were amended to reflect that, as of February 22, 2010, he would be living in "field conditions," that he was to eat at a base dining facility (Government Mess Directed), and that his M&IE per diem was to be reduced to \$3.50/day. On February 25, 2010, claimant met with the Non-Commissioned Officer in Charge of Food Service, Directorate of Logistics (DOL), Area Support Group-Kuwait, and was advised that, because of the conflict between his original and amended travel orders, and because he was assigned to Kuwait City and not to a military installation, his orders would not be stamped and he would not be provided with *any* free Government-furnished meals; instead, he would have to pay for all his meals out of pocket.

Claimant continued to fund all of his meal costs through June 15, 2010. On June 14, he received another CID email message, this one advising that his M&IE per diem rate had been retroactively changed to provide for a "proportional rate" of \$71/day, that his travel orders were being amended a second time, and that he was directed to have these amended orders stamped by DOL Food Service. Under these amended orders, claimant was to be furnished with two free meals per day at a base dining facility. On June 16, he received these amended orders and took them to the DOL Food Service, where they were stamped. Thereafter, until his return to Texas on July 21, claimant was able to receive two free Government-furnished meals per day.

Upon his return, claimant submitted a voucher for his TDY and was paid M&IE per diem of: (1) \$109/day for the period February 15 through February 21; and (2) \$71/day for the period February 22 through July 20 – with the exception of three brief periods (March 3-7, March 24-28, and April 13-19) when he was detailed to Doha, Qatar, and was paid full M&IE per diem. Claimant now seeks the \$38/day difference between the full \$109/day per diem rate and the \$71/day "proportional rate" he received for a net of ninety-seven days, i.e., February 22 through June 15, less the three brief periods when he was in Doha. This amounts to a total of \$3686. Claimant asserts no claim for the period June 16 through July 20, when he was authorized to receive two Government-furnished meals on a daily basis. CID maintains that claimant was paid adequately for all of his meal costs and has rejected his present claim.

Discussion

The Federal Travel Regulation and the Defense Department's Joint Travel Regulations (JTR) generally require an agency to pay employees who travel on government business a per diem allowance to cover the cost of their meals and incidental expenses. 41 CFR 301-11.1 (2009); JTR C4550. The amount of the allowance is prescribed by the General Services Administration for locations in the continental United States, by the Defense Department for non-foreign areas, and by the State Department for foreign areas. 41 CFR 301-11.6. The regulations provide that when the Government pays directly for some or all of a traveler's meals, this allowance must be adjusted downward. 41 CFR 301-11.18; JTR C4550-C. As the JTR explain, "The GOV'T should not pay for the same meal twice (originally by registration fee, etc., and then again through per diem.)" JTR app. O T4040-A.2.c.

After initial confusion, the agency appears to have attempted to follow these rules -- but with only partial success. It reduced claimant's per diem allowance from \$109 to \$71 for each of the days between February 22 to July 21, on the ground that the Government was furnishing two of his meals on each of those days. For the days between June 16 and July 21, the reduction was reasonably-based, for the Government was actually furnishing him two meals on each of those days. For each of the ninety-seven days that claimant was on TDY in Kuwait between February 22 and June 15, however, the Government did not furnish him with any meals. The alleged justification for reducing his per diem allowance was therefore baseless. We consequently agree with claimant that he should have received a full per diem allowance for each of those days.

Decision

The claim is granted.

RICHARD C. WALTERS
Board Judge