



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 30, 2012

CBCA 2777-TRAV

In the Matter of JESUS R. GONZALEZ

Jesus R. Gonzalez, Santo Domingo, Dominican Republic, Claimant.

James E. Hicks, Senior Attorney, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

POLLACK, Board Judge.

Claimant, Jesus R. Gonzalez, an employee of the Drug Enforcement Administration (DEA) stationed in Santo Domingo, Dominican Republic, requests reimbursement of \$4548.25 for home leave travel incurred from December 17, 2011, to January 9, 2012. Claimant asserts he is entitled to full reimbursement of his travel voucher because of his detrimental reliance on statements from DEA Headquarters (FAPM) as well as an alleged discrepancy between the Department of Justice (DOJ) Travel Policy and the DEA Permanent Change of Station-Foreign Assignment Relocation Handbook.

Background

Claimant had been stationed in Santo Domingo for twenty-four consecutive months when he agreed to renew his tour. Under statute and regulation, he became eligible for home leave.

Accordingly, on October 24, 2011, claimant e-mailed a proposed travel itinerary to the Traffic Management Specialist, FAPM, showing travel from Santo Domingo to San Diego, California. He noted that an additional travel itinerary to an intended destination, Rome, Italy, would be sent later. On November 14, 2011, claimant filled out DEA Form 132a, Authorized Travel Expenses, for \$3476. That reflected the lowest available common

carrier fares for him and his family from Santo Domingo to San Diego, California, his place of residence.

On December 1, 2011, claimant asked the same traffic management specialist if he could book his airfare for Rome, Italy, that day. The specialist consulted with the chief of her unit of FAPM, and each sent e-mail messages to claimant allowing him to book his airfare, but they also warned him that his reimbursement was limited to the lowest cost round trip airfare from Santo Domingo to San Diego. Based on the guidance and approval provided, claimant understood that he would be reimbursed up to the airfare from Santo Domingo to San Diego; but to the extent his airfare to Rome exceeded that figure, he would not receive additional reimbursement beyond the San Diego fare.

Claimant proceeded with his travel, relying on the approvals provided. His route initially took him to San Juan, Puerto Rico, where he and his family spent four days. He then continued on to Rome.

Upon his return, he submitted a travel voucher (dated January 11, 2012) for \$4548.25 (including constructive air fare and per diem), which was initially denied in full by the DEA Financial Operations Section based on the understanding that under Federal Travel Regulation (FTR) 302-3.222, claimant was entitled to no reimbursement for his flight. However, after claimant requested reconsideration, DEA did approve expenses of \$914.85 (for himself and his family), based on round trip airfare and his per diem using the cost of the airfare from Santo Domingo to San Juan. Claimant here seeks to be reimbursed for the full travel voucher of \$4548.25.

The applicable statute and regulations are set out below. § 5 U.S.C. 5728 (2006) provides:

- (a) Under regulations prescribed under section 5738 of this title, an agency shall pay from its appropriations the expense of round-trip travel of an employee, and the transportation of his immediate family . . . from his post of duty outside the continental United States, Alaska, and Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has successfully completed an agreed period of service outside of the continental United States, Alaska, and Hawaii and is returning to his actual place of residence to take leave before serving another tour

The implementing regulations provide, in pertinent part:

§ 302-3.220 May my family and I travel to another U.S. location (other than from [sic] my actual place of residence) under my tour renewal agreement?

Yes, you and your family may travel to another U.S. location (other than from [sic] your actual place of residence) under your tour renewal agreement. However, your agency will only reimburse you for the amount of authorized expenses from your post of duty to your actual place of residence and return (as appropriate) on a usually traveled route.

NOTE TO § 302-3.220: If your actual place of residence is located in the U.S., you and your family must spend a substantial amount of time in the U.S. in order to receive reimbursement.

§ 302-3.221 If I travel to another place in the U.S. (other than my actual place of residence) am I required to spend time at my actual place of residence to receive reimbursement?

No, you are not required to spend time at your actual place of residence to receive reimbursement if you travel to another place in the U.S. (other than your actual place of residence).

41 CFR 302-3.220, .221 (2011). The regulations then specifically address travel overseas, stating:

§ 302-3.222 Will I be reimbursed if I travel to another overseas location (instead of the U.S.)?

If you travel to another overseas location (instead of the U.S.), you will be reimbursed only if your actual residence is within that country in which you are taking your leave, and then you will only be reimbursed your authorized travel and transportation expenses. You will have to pay any expense(s) above your authorized amount.

Id. 302-3.222.

In addition to the above, the Government and claimant cite two publications, one by DOJ and the other by DEA, which address home travel. The DOJ's Permanent Change of Station Foreign Assignment Handbook provides the following:

Home leave may be taken to a location other than the location designated as the employee's Home of Record. However, employees are reminded that a substantial amount of time must be spent in the U.S., U.S. territories or possessions, in order to be authorized reimbursement for Home Leave. Further, travel reimbursement for Home Leave taken at a location other than the employee's Home of Record is limited to the constructive cost of travel between the employee's post of duty and Home of Record.

The DEA's Foreign Orientation Handbook, Office of Global Enforcement, states:

You may travel to a location other than home of record, however, if your home of record is in the U.S. you must spend 24 hours in the U.S., its territories or possessions, to be entitled to the allowance authorized. The amount allowed to an alternate location shall not exceed the amount which would have been allowed for travel over the usually traveled route from post of duty to the place of actual residence and return to the same or a post of duty outside the continental U.S., as the case may be.

On their face, neither handbook specifically allows or forbids air fare reimbursement if one took home leave overseas. Additionally, their wording could be read to imply that travel overseas is reimbursable. Nevertheless, as noted above, 41 CFR 302-3.222 specifically denies reimbursement if the overseas travel is not to the claimant's residence, and as addressed below, internal agency documents, even if more explicit, cannot overrule a regulatory prohibition.

Discussion

There can be no question that claimant made known to DEA his intention to fly to Rome, or that DEA approving officials clearly conveyed that claimant could do it, and assuming his air fare to Rome exceeded the constructive air fare from Santo Domingo to San Diego, claimant would be reimbursed the constructive fare. Claimant cannot be faulted for his actions.

That being said, this claim again puts us in the unenviable position of having to deny a claim, even though the claimant acted reasonably and incurred costs based on erroneous advice by government officials. As we have stated in numerous cases, we are constrained

by law to rule that where a law or regulation specifically prohibits a payment, erroneous advice by a government official cannot negate that prohibition. Moreover, in assessing matters of erroneous guidance, agency policy, and pronouncements, even if the direction is written or mistated in a local manual, it cannot be enforced if it conflicts with a statute or regulation. *Bruce Bryant*, CBCA 901-RELO, 08-1 BCA ¶ 33,737 (2007); *Manuel S. Figueroa*, CBCA 486-TRAV, 07-1 BCA ¶ 33,540. Even if the travel authorization seemed to entitle claimant to the full amount, an agency cannot pay monies in violation of regulations. *See Thomas A. Gilbert*, CBCA 2214-RELO, 11-2 BCA ¶ 34,786; *Joseph E. Cople*, GSBICA 16849-RELO, 06-2 BCA ¶ 33,332, at 165,290.

In this case, the regulation implementing the statute, 41 CFR 302-3.222, states clearly that if one travels overseas, the employee will be reimbursed “only if your actual residence is within that country in which you are taking your leave.” While the wording in the note at 41 CFR at 302-3.220, addressing the need to spend substantial time, could be taken to imply that overseas travel is permitted, that note is at best ambiguous. More to the point, the note does not contradict the words of 41 CFR 302-3.222, which prohibits reimbursement if the destination flown to is outside of the United States and is not the residence of record.

We have considered claimant’s arguments that the DOJ and DEA handbooks are confusing and contradictory. As stated above, local manuals and guidance, even if conveying a different result, cannot invalidate a regulatory or statutory requirement. Since the regulation clearly provides there will be no reimbursement if one flies to a foreign site which is not one’s residence, the wording of the manuals provides no relief. We do note however, that the agencies involved would be well served to also include in a prominent place in those publications the prohibition set out in 41 CFR 302-3.222.

Decision

The Board denies the claim.

HOWARD A. POLLACK
Board Judge