



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 21, 2012

CBCA 2666-TRAV

In the Matter of DANE HANSON

Dane Hanson, California, MD, Claimant.

Bonnie Petree, Head, Customer Service Division, Travel Department, Naval Warfare Center Aircraft Division Comptroller, Department of the Navy, Patuxent River, MD, appearing for Department of the Navy.

SHERIDAN, Board Judge.

Claimant, Dane Hanson, a civilian employee of the Naval Air Systems Command (NAVAIR) whose permanent duty station is located at the Naval Air Station Patuxent River (PAX River), Maryland, requests reimbursement for \$71 for meals and incidental expenses (M&IE), and \$ 229.99 in lodging expenses, incurred for the night of May 23, 2011. Claimant asserts he is entitled to those expenses because, while traveling on temporary duty (TDY), his outgoing flight was canceled after hours and he considered it more cost effective and productive to stay in a hotel rather than return to his residence or official duty station. The claim is denied because, except in very limited circumstances not present here, the Federal Travel Regulation (FTR) and Joint Travel Regulations (JTR) do not authorize reimbursement for per diem expenses within the geographic limits of the official duty station.

Background

On May 23, 2011, claimant drove from his official duty station at PAX River, Maryland, to Reagan National Airport (DCA) in Washington, DC, for a flight that was scheduled to leave on that day at 4:20 p.m. His flight was delayed several times, and

ultimately, it was canceled, sometime “after hours.”¹ Claimant was rescheduled to leave the evening of the following day, May 24, 2011, from Dulles International Airport (IAD), Dulles, Virginia, at 6:20 p.m.

Both DCA and IAD airports have been designated as being within the geographic limits set by claimant’s permanent duty station (PDS) at PAX River. Rather than drive the approximately sixty miles to return to his residence in California, Maryland, and then drive the approximately ninety miles back to IAD the next day, claimant spent the night at a hotel by IAD, incurring lodging expenses of \$ 229.99. He also seeks \$71 in M&IE for May 23, 2011.

Claimant makes several arguments to justify compensation. He states that since the DCA flight was cancelled “after hours,” he was not able to contact his supervisor for instructions. Claimant points out that he would have exceeded his scheduled number of working hours for the day if he had driven home; by saving on driving time he was “more productive” as he was able to work from his computer for three additional hours on May 23 and four additional hours on May 24. Claimant posits that the nightly room charge was less than his charging an “overhead rate” for the time to travel home after hours, the additional fuel, and the loss of productivity that would have occurred in driving back and forth from the airports.

The agency denied reimbursement for the \$229.99 in lodging expenses and the \$71 for M&IE, asserting that claimant should have returned to his residence after the flight was canceled. As authority for its denial, the agency cited JTR C4552-C.1.a, which provides that per diem cannot be authorized or paid within an employee’s PDS limits, or within the vicinity of the employee’s residence from which he or she commutes daily to the official station. Claimant has asked the Board to review this determination.

Discussion

Regarding per diem, the Federal Travel Regulation (FTR) applicable to this travel provides:

§ 301-11.1 When am I eligible for an allowance (per diem or actual expense)?

When:

¹ The record does not provide the precise time when the flight was canceled.

- (a) You perform official travel away from your official station, or other areas defined by your agency;
- (b) You incur per diem expenses while performing official travel; and
- (c) You are in a travel status for more than 12 hours.

....

§ 301-11.9 When does per diem or actual expense entitlement start/stop?

Your per diem or actual expense entitlement starts on the day you depart your home, office or other authorized point and ends on the day you return to your home, office or other authorized point.

41 CFR 301-11.1, -11.9 (2011).

Since claimant is a civilian employee of the Department of Defense, the JTR is also applicable to his travel; JTR C4552 addresses the general rules regarding per diem. For purposes of per diem, official travel begins on the day an employee leaves the place of abode, office, or other authorized departure point and ends on the day the employee returns to the place of abode, office, or other authorized point at the TDY assignment conclusion. JTR C4552-A. Per diem cannot be authorized or paid within the PDS limits or the vicinity of the residence from which the employee commutes daily to the official station, except as provided in paragraph C4552-D. *See* JTR C4552-C.1.a. JTR C4552-D does not apply to the facts of this case.

Limited exceptions to the rule in JTR C4552-C.1.a. have been carved out where per diem may be authorized in connection with transportation delays at the PDS caused by weather-related circumstances beyond the control of the employee after the employee returns to the PDS vicinity from the TDY location. *Mark E. Byers*, CBCA 2371-TRAV, 11-1 BCA ¶ 34,763. A similar exception to the rule was found in *Diane M. Balderson*, CBCA 2416-TRAV, 11-2 BCA ¶ 34,801, where the Board determined that safety concerns for the claimant and the public, and the prospect of an one and one-half hour early morning drive to her residence after an eighteen-hour work day justified reimbursement of lodging expenses for the night. *See also Michael N. Heinz*, CBCA 2696-TRAV (slip op., April 3, 2012) (the Board allowed lodging expenses where claimant stayed overnight in a hotel when his return flight arrived at approximately 1:00 a.m., and he was too tired to drive the nearly two hours to his residence).

Claimant's circumstances do not fit within the limited exceptions articulated for the rule. There is no evidence that claimant's returning to his residence after the DCA flight was canceled would have presented a danger to himself or the public; no weather conditions were raised showing that a return would have been dangerous. It was claimant's preference to stay the night at a hotel, because it "made sense" to him. However, the resultant expenses he incurred were not authorized, nor should they be.

Regarding the claim for M&IE, while claimant's TDY began when he left his office around 1:00 p.m. on May 23 to catch his flight at DCA, he never left the geographic limits of his official duty station so he is not entitled to per diem, including M&IE.

Decision

The case is denied.

PATRICIA J. SHERIDAN
Board Judge