



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 23, 2012

CBCA 2628-TRAV

In the Matter of MICHAEL R. MILLER

Michael R. Miller, Washington, DC, Claimant.

Kirsten N. Witter, Katherine Austin, and Charles J. Butler, Office of Chief Counsel, Internal Revenue Service, Department of the Treasury, Washington, DC, counsel for Department of the Treasury.

ZISCHKAU, Board Judge.

Michael R. Miller, the claimant, appeals the denial of his claim for per diem lodging and meals and incidental expenses (M&IE) for three of the five days during the period December 29, 2010, through January 2, 2011, in connection with his being detailed to the agency's Washington, D.C., field office. The agency's auditor approved reimbursement for December 29, when he departed Georgia, and January 2 as an extra day for the travel, but denied his claim for the intervening days of December 30 to January 1 on the ground that his report date was January 3, 2011. We conclude that Mr. Miller is entitled to reimbursement for the entire period.

Discussion

Mr. Miller was selected in August 2010 to be detailed from his duty station in Glynco, Georgia, to the Washington field office as part of a taskforce. The detail was expected to last one year. His approving official authorized him to travel to Washington, D.C., using his privately owned vehicle (POV), departing Glynco on Wednesday, December 29, 2010, and driving approximately 380 miles to Raleigh, North Carolina. The authorization further provided that he would spend the night in Raleigh and depart that city on Thursday, December 30, for the 280 mile trip to Washington where he would report to his new duty station upon arrival. Mr. Miller explains:

Prior to the beginning of this detail, I had many conversations with [my supervisor] . . . regarding when I should report to the [Washington Field Office]. [The supervisor] . . . explained to me that the newly formed group I was joining . . . desperately needed [personnel]. Prior to my arrival, the group had only two [personnel]. The goal of the [field office] was to get this new group fully operational as soon as possible. [My supervisor] . . . requested I arrive as soon as possible. Subsequent conversations I had with [my supervisor] led to the agreement that I was to travel to Washington D.C. on December 29, 2010, and arrive and report December 30, 2010.

The agency has pointed us to no persuasive evidence that Mr. Miller's official start date was any date other than December 30, 2010. In the travel authorization, his supervisory official also approved the use of his POV as the most advantageous travel method to the Government. Mr. Miller had to bring large amounts of equipment, clothing, and other work-related materials with him for his assignment, and transporting these items by any other means would have been difficult and more expensive to the government.

The agency repeatedly argues that Mr. Miller was not engaged in any official business from December 30, 2010, through January 2, 2011. We do not agree. Pursuant to his travel authorization, Mr. Miller was on official travel for nearly a full day on December 30. Clearly, his official travel on December 30 was itself official business. Upon arrival in Washington, D.C., he reported to the field office for a brief period of time. The agency's refusal to recognize December 30 as a day of official business is perplexing, as is the agency's approach of using January 2 as a "constructive (second) travel date," when Mr. Miller's actual second travel date was December 30. Starting on December 30, Mr. Miller spent hours unloading and unpacking his work clothing, gear, and equipment, which filled a sport utility vehicle and part of a trailer. Additionally, he spent several hours during the period in question obtaining tools and hardware, and several more hours outfitting his temporary quarters to protect and safely store his work gear and equipment. In addition, by reporting for duty on December 30, Mr. Miller was available to the Washington field office to work unscheduled overtime during the period of December 31 to January 2, as required by the Internal Revenue Manual.

The agency appears to argue that because Mr. Miller traveled to Washington, D.C., in his POV with his family and household items, his travel on December 29-30 was more related to spending "the long weekend resting and getting his family settled" than performing official duties. Because we have concluded that Mr. Miller was authorized to travel on those dates, and did so in furtherance of his official duties, the fact that his family joined him on the trip with the purpose of relocating to Washington, D.C., is simply not relevant to whether he is entitled to reimbursement for his per diem expenses in connection with his official

travel and detail to the Washington field office. In addition, although the agency concedes that Mr. Miller reported to the field office on December 30, the agency complains that “he did not stay in the office that day for a full-day’s work,” as if he had to spend eight hours in the field office in order for the day to count as his report date. Considering the official travel earlier on December 30 preceding his arrival in the field office and the unpacking and organizing of his work clothing, gear, and equipment, we find that Mr. Miller performed at least a full-day’s work on that day in connection with his field office detail.

Decision

Mr. Miller has demonstrated that he was entitled to reimbursement of his per diem expenses for December 30, 2010, through January 1, 2011, and the agency erred in disallowing those expenses. Accordingly, the agency shall reimburse Mr. Miller for those expenses.

JONATHAN D. ZISCHKAU
Board Judge