



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 17, 2013

CBCA 3251-TRAV

In the Matter of JEFFREY E. KOONTZ

Jeffrey E. Koontz, APO Area Europe, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant, Jeffrey E. Koontz, a civilian employee of the Department of the Army, has asked this Board to review the agency's determination that he must pay back to the agency amounts he received as reimbursement of travel expenses while he was on temporary duty (TDY) travel.

Factual Background

The agency audited claimant's travel vouchers and asserted that claimant was improperly reimbursed expenses that were incurred during TDY. The auditor concluded that the TDY location should have been designated as claimant's permanent duty station (PDS). Claimant then paid \$41,067.99 in response to notices of collection of debt, but contends he did not owe the debt. He now asks this Board to review the agency's determination. The expenses in question were incurred between July 2011 and November 2012.¹

¹ Until January 26, 2012, claimant was a member of the uniformed military. From February 7, 2012, claimant was a civilian employee. Pursuant to 31 U.S.C. § 3702 (2006), this Board has the authority to settle claims for travel and relocation expenses for civilian

Claimant was the Chief of Security and Law Enforcement for the agency's South Pacific Division. He was assigned this duty in 2003, when he was a member of the uniformed military, and continued in that employment status through January 21, 2012. He was subsequently hired as a civilian employee effective February 7, 2012. When he was hired as a civilian, his command believed and expected that he would be able to perform his duties from his PDS, Phoenix, Arizona, where he lived with his family. Due to personnel issues in the Security Office, including illness of an employee, and a heavy demand for claimant's expertise by other federal agencies, he was required to work in Los Angeles, California, more frequently than was anticipated.

The Joint Travel Regulations (JTR) require prior approval for TDY that extends more than 180 days. JTR C2230. Claimant's supervisor believed that a weekly break in TDY, on weekends, was sufficient to exclude this assignment from the consecutive 180-day limit. Thus, a request was not made for an extension before claimant performed 180 days of TDY. When it became apparent that there would be a continuing need for claimant to work in Los Angeles, the agency changed claimant's PDS to Los Angeles as of November 4, 2012.

Claimant submitted his vouchers for payment as travel was performed, and the vouchers were approved. Before August 2012, the agency's Finance Center audited claimant's travel vouchers and found that his orders were not in violation of any regulations. However, the Finance Center again audited claimant's travel vouchers in August 2012 and informed his supervisor that claimant would be issued a debt collection notice in the amount of \$34,998.14 for travel vouchers paid for TDY to the Los Angeles office from July 2011 through August 2012.

The auditor concluded:

[Claimant had] TDY travel to Los Angeles which should be his permanent duty station (PDS) and therefore, not allow him to be in a TDY status. I have included JTR and GSBCA [General Services Board of Contract Appeals] Decision references below.

IAW [in accordance with] JTR Paragraph C4552 C.1a: Per diem cannot be authorized or paid within the PDS limits, or at, or within the vicinity of the

employees. The majority of the TDY travel in excess of 180 days and various relevant circumstances occurred while claimant was a civilian employee. We therefore resolve this claim in its entirety, as it would not be possible to resolve the claim in part without considering the entire record presented here.

place of abode (residence) from which the employee commutes daily to the official station.

An employee's permanent duty station is the place at which he performs the major portion of his duties and where he is expected to spend the greater part of his time. *John P. DeLeo*, GSBCA 14042-TRAV, 97-2 BCA ¶ 29,156.

Activities must not fix an employee's PDS at a place for the purpose of paying per diem when most official duties are performed at another place. JTR C4552B, citing 31 Comp. Gen. 289 (1952).

I have attached a spreadsheet showing travel orders and reimbursements to Los Angeles for Mr. Koontz. Based on our audit the amount we propose to be billed to Mr. Koontz is \$34,998.41. For travel performed to other locations, I reconstructed the itineraries to reflect travel to/from PDS to actual TDY locations.

When claimant's commanding officer became aware of the audit findings, he sought retroactive approval for extension of claimant's TDY in excess of 180 days, stating:

Recommend authority/approval be granted for order issuance after the fact to authorize TDY over 180 consecutive days. The error was immediately reported/rectified, as soon as it was discovered, in accordance with standard procedures. The unforeseen personnel issues in the Safety Office meet the criteria of JTR, Vol. II, paragraph C2230-B(2) and justify an extension. Additionally, Mr. Koontz volunteered for the TDY assignment in support of the Regional mission needs and the District's lack of other Security personnel that could meet the need in the Los Angeles office. It is unfortunate that he is placed at financial risk for volunteering his assistance. Therefore, I am specifically requesting that you approve this after-the-fact waiver to ensure Mr. Koontz does not suffer undue financial hardship, in light of his noteworthy service. The TDY costs are approximately 46% of the TCS [temporary change of station] costs and provide the most cost-effective solution to the Safety office staffing issues while attaining mission success.

We have reviewed the workforce/workload TDY assignments of all employees and verified that no TDY will exceed 180 days. All Division Chiefs, Supervisors and employees were informed of the 180 TDY limit and provided copies of the guidance. To ensure future TDY does not exceed 180 days, TDY

reviews will be performed quarterly and additional supervisor training will be conducted.

The request for extension of the TDY was not approved, despite the commanding officer setting forth what he considered justification for the extension. The denial stated that 1) the request lacked the necessary compelling information to support an extension under the strict scrutiny standards for extended TDY in excess of 180 days, and 2) the reasons articulated for the extended TDY raise serious questions concerning the designated PDS. There was no further elaboration.

Claimant received notices of debt collection totaling \$41,067.99. He made two payments under protest. The first payment was for \$34,998.41, the amount referenced by the auditors for travel through August 2012. The second payment for \$6069.58 was for travel expenses incurred September 2012 through November 4, 2012, before claimant's PDS was changed to Los Angeles.

Discussion

The employee was issued travel orders for TDY travel away from his designated PDS, where he lived with his family, for an extended period of time. His travel vouchers were submitted, reviewed, and paid. Claimant's travel vouchers were audited and the agency had ample opportunity to note any defect or violation of regulation. No notification was given and the employee had no reason to question the propriety of the reimbursements.²

After extensive travel was performed and entitlements paid, in August 2012 the agency again audited claimant's travel vouchers and concluded that claimant had been ordered to take extended TDY in excess of 180 days without prior approval. The auditor further concluded that the place of claimant's extended TDY was actually his PDS, and he was therefore not entitled to receive reimbursement for any of the TDY costs that had been previously approved and paid.

Claimant's commanding officer clearly believed the auditor's conclusion was erroneous. In so stating, he cited JTR C2230, which reads in relevant part:

² Since 2000, the Federal Travel Regulation has provided that an agency must, as soon as practicable, notify a traveler of any defect in a submitted voucher that would prevent payment within thirty days after submission of the voucher. 41 CFR 301-52.18 (2000). Beginning "not later than May 1, 2002," the maximum time period for an agency to notify an employee that a claim was not proper is seven working days. *Id.*; *Mark J. Lumer*, CBCA 2169-TRAV, 11-2 BCA ¶ 34,780.

B. 180-Day Time Limitation

1. General. A TDY assignment at one location may not exceed 180 consecutive days, except when authorized under par. C2230-C (36 Comp. Gen. 757 (1957)).

2. Extensions

a. Bona fide assignment extensions that, when added to the originally authorized period, total 181 or more consecutive days may be directed.

b. Extensions are limited to those cases where there has been a definite change or unforeseen delays were encountered.

C. When mission objectives/unusual circumstances require TDY at one location for more than 180 consecutive days the appropriate authority must determine if TDY of greater than 180 days is appropriate.

The commanding officer realized that he should have previously sought prior approval for claimant's extended TDY travel, as he believed unforeseen circumstances warranted granting an extension of TDY travel. He therefore submitted information for after-the-fact approval. The request was summarily rejected without stating reasons for the rejection.

The auditor's conclusion that Los Angeles "should be" claimant's PDS is based solely on the amount of time that claimant spent at the TDY location. However, a proper determination of a PDS considers other factors. Here, claimant's PDS for the period in which the TDY travel was performed was designated as Phoenix, Arizona. The papers processed by an agency are not conclusive proof of an employee's official station of employment. *See Tracy Jones*, GSBCA 15659-TRAV, 02-1 BCA ¶ 31,687 (2001). A duty station is determined from the surrounding circumstances of an employee's hiring and work situation. *Robert L. Shotwell*, CBCA 1887-TRAV, 10-2 BCA ¶ 34,514; *Michael A. Stirber*, CBCA 1271-TRAV, 08-2 BCA ¶ 34,006. An important factor to be considered is the parties' expectations as to where the employee will spend the greater part of his time. *Id.*; *John P. DeLeo*, GSBCA 14042-TRAV, 97-2 BCA ¶ 29,156. How the agency and the employee treated the assignment at the time it was made is especially important. *Gerard R. Sladek*, GSBCA 14145-TRAV, 98-1 BCA ¶ 29,403 (1997).

The auditor's conclusion does not consider the legal principles set forth above and the relevant facts. Claimant and his family lived in his designated PDS, Phoenix. Both claimant

and his supervisor expected claimant to spend the greater portion of his time working at his designated PDS, with occasional TDY travel to Los Angeles, California. The facts demonstrate that both claimant and the agency entered the employment arrangement with the belief and understanding that claimant would perform the majority of his work from his PDS, Phoenix. However, as the agency lacked sufficient personnel in Los Angeles to accomplish its mission, claimant volunteered for TDY there. After claimant commenced his TDY travel to Los Angeles, one of the employees in that office became ill, requiring claimant to spend more time there than originally anticipated by management.

Management personnel, rather than administrative or budget officials, are in the best position to make judgments as to the determination of a PDS, based upon the relevant facts and agency needs. *Michael J. Romansky*, CBCA 2594-TRAV, 12-1 BCA ¶ 35,016. The auditor's conclusions were based solely upon the number of days spent at the TDY location, without considering management's true intent and agency needs as stated by claimant's commanding officer. We find that the surrounding circumstances demonstrate that claimant's official duty station was Phoenix, and not Los Angeles.

Legal rights and liabilities with regard to travel expenses vest when the travel is performed, and valid travel orders may not be revoked or modified retroactively so as to increase or decrease the rights that have become fixed after the travel has been performed. *Dana Riser*, GSBICA 14017-RELO, 98-1 BCA ¶ 29,417 (1997). Travel orders may be amended or revoked to correct an error on the face of the orders or if the orders clearly are in conflict with a law, regulation, or agency instruction.

There were no errors on the face of the travel orders. Phoenix was clearly claimant's PDS and he was assigned TDY in a location that was not his PDS. The orders were not in conflict with law, regulation, or agency instruction, as unforeseen circumstances were sufficient circumstances to justify the extension of the TDY in excess of 180 days. The orders may be amended to reflect management's intent to extend the TDY travel in excess of 180 days based upon unforeseen circumstances.

In *Craig A. Bergquist*, CBCA 2799-TRAV, 13-1 BCA ¶ 35,202 (2012), we found that an agency had waived its right to recover payments made for TDY travel to a TDY location before that location was designated as the new PDS location. We find that here, the agency's recouping from claimant the payments made pursuant to valid travel orders was improper.

Decision

The notices of debt collection state that the finance center will promptly refund any amounts paid that are found not owed to the United States. The claimant is due a refund of \$41,067.99, the total amount he has paid in response to the notices of debt collection.

ALLAN H. GOODMAN
Board Judge