



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 21, 2013

CBCA 3059-TRAV

In the Matter of CAROLYN R. WORKING

Carolyn R. Working, Bronx, NY, Claimant.

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

KULLBERG, Board Judge.

Claimant, Carolyn R. Working, seeks review of the decision by her employer, the Internal Revenue Service (IRS), to collect from her the cost of a coach-class seat upgrade for her flight to Seoul, South Korea, while she was on temporary duty (TDY). Ms. Working sought the upgrade so that she would have a seat that could recline during an overseas flight. The IRS contends that Ms. Working has provided no medical documentation to support the upgrade, and in the absence of such evidence, her upgrade is deemed to have been a personal expense. For the reasons stated below, the claim is denied.

Background

During May 6 to May 11, 2012, Ms. Working traveled from her place of work, Bronx, New York, to Seoul, South Korea, by way of San Francisco, California (overnight stay). The seat that had been reserved on her flight from San Francisco to Seoul, which was twelve hours in length, was located at the rear of the plane and did not recline. Ms. Working believed that being seated in such a manner during her flight would have been “unbearable,”

so she requested and received approval from her supervisor and the Assistant Special Agent in Charge (ASAC) for an economy class (premium seat) upgrade. She paid \$149 for the upgrade before her departure.

After completing her TDY, Ms. Working submitted her travel claim and received reimbursement for the premium seat upgrade. A subsequent audit of her voucher determined that the upgraded seat was a personal expense and not reimbursable. The IRS issued a letter demanding that Ms. Working repay the cost of the upgrade, \$149, plus interest, and the Board docketed her claim and directed the IRS to submit its agency report in response to her claim.

In its agency report, the IRS contended that Ms. Working had not provided any documented evidence of a medical condition that would justify reimbursement for the upgraded seat. By letter dated January 14, 2013, Ms. Working submitted to the Board a March 31, 2008, letter from her doctor that stated she had “a history of low back pain/disc herniation in the past which is resolved and is no longer a medical issue.” In her letter that accompanied the doctor’s statement, Ms. Working indicated that she has been able to manage her “disc problem by frequently stretching, and by not sitting for long periods of time.” Additionally, Ms. Working stated that she was “not currently under the care of a physician for [her] back and therefore was not able to obtain a doctor’s note certifying [her] issue.” In response to the letter from Ms. Working’s doctor, the IRS obtained a review from a medical doctor who was an occupational medicine consultant with the Department of Health and Human Services (HHS). That review from HHS stated the following:

While it is true that [Ms. Working] might still have a visible abnormality on her spinal MRI, most people with abnormalities are not symptomatic, and there is nothing to indicate that she has had any back symptoms for the past five years. This letter would thus not serve as justification for buying a premium air ticket.

Discussion

The issue in this matter is whether the IRS properly exercised its discretion in its audit of Ms. Working’s travel claim and subsequent demand for repayment of the cost of a coach-class premium seat upgrade, which had previously been authorized. The Federal Travel Regulation (FTR), which applies to Ms. Working, requires that employees traveling by air on official travel, either domestic or international, use coach-class accommodations. 41 CFR 301-10.122 (2011) (FTR 301-10.122). The FTR also provides

the following with regard to reimbursement for the cost of upgrades within coach-class travel:

[T]he use of these upgraded/preferred coach seating options is generally a traveler's personal choice and therefore is at the traveler's personal expense. An agency travel authorization approving official or his/her designee (e.g. supervisor of the traveler) may authorize and reimburse the additional seat choice fee according to internal agency policy.

Id. 301-10.124. The IRS' Official City-to-City Travel Guide states the following:

May I be reimbursed for coach class seating upgrades to a window or aisle seat?

Generally, no, IRS will not pay for the fee the airline charges to upgrade a seat selection in coach class. This is a personal expense. However, if the employee has a medical condition documented by a medical professional that requires the additional space, the approving official may authorize reimbursement of the fee.

Internal Revenue Manual (IRM) 1.32.11.8.3(8).

The Board finds that the determination of the IRS audit was a proper exercise of discretion in light of the FTR and its policy set forth in the IRM. It is well established that an agency's discretion to reimburse an employee for upgraded seating will be upheld unless it is "arbitrary, capricious, or an abuse of discretion." *Denise Martin*, GSBCA 16666-TRAV, 06-1 BCA ¶ 33,196, at 164,567; *Gemelia Restum*, GSBCA 16671-TRAV, 06-1 BCA ¶ 33,151, at 164,275 (2005); *Gary Hopkins*, GSBCA 16667-TRAV, 05-2 BCA ¶ 33,026, at 163,670. In order for Ms. Working to be reimbursed for an upgraded coach-class seat, IRS policy required her to provide documentary evidence of a medical condition to justify the additional cost, but no such documentation was provided before or after her TDY. The statement from Ms. Working's doctor only shows a history of treatment for back pain in 2008, but that same letter also indicated that the her back problem was no longer a medical issue. Ms. Working's January 14, 2013, letter conceded that she is not currently under treatment by a doctor and could not provide any more recent documentation as to her condition. The medical opinion provided by the IRS noted that although Ms. Working has a history of a herniated disk, such a history by itself does not establish that

she currently has a back problem. Ms. Working, consequently, has not demonstrated that she has a medical problem that would justify an upgraded coach-class seat.

Ms. Working contends that she acted in good faith in purchasing an upgraded seat because her supervisor and the ASAC approved her purchase of a premium seat upgrade. IRS policy required that Ms. Working's supervisors obtain from her supporting medical documentation in order to authorize an upgraded coach-class seat. No such documentation was provided, and, as discussed above, no supporting documentation was provided subsequent to the docketing of this matter. In this case, it was proper for the IRS audit to disallow any cost for upgraded seating "when the proper approval was not obtained and the upgrade was not justified." *See Steven J. Maass*, GSBCA 16393-TRAV, 04-2 BCA ¶ 32,796, at 162,213.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge