



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: January 14, 2013

CBCA 2933-TRAV

In the Matter of VALENTINA CAPERTON

Valentina Caperton, Chief of Internal Review, U.S. Army Corps of Engineers, Department of the Army, San Francisco, CA, Claimant.

Adrienne K. Price, Office of Counsel, Finance Center, U.S. Army Corps of Engineers, Department of the Army, Millington, TN, appearing for the Department of the Army.

SHERIDAN, Board Judge.

Claimant, Valentina Caperton, a civilian employee of the United States Army Corps of Engineers (USACE), seeks review of the denial of reimbursement for certain transportation expenses. The claim is denied because an employee on extended temporary duty (TDY), who travels for personal reasons to a location other than his or her permanent duty station (PDS) (or place of abode from which the traveler commutes daily to the PDS), and returns to the TDY location, is not authorized transportation expense reimbursement.

Background

Claimant's PDS is in San Francisco, California. Claimant was on extended TDY in the Washington, DC, area beginning June 13, 2011. Her orders contained the following sentence in the "Remarks" section: "EMPLOYEE ON EXTENDED TDY ENTITLED TO PERIODIC RETURN TRAVEL HOME PER DIEM OR ACTUAL EXPENSES AND ROUND TRIP TRANSPORTATION TO RESIDENCE OR OTHER LOCATION OF LESSER OR EQUAL AMOUNT." Claimant's supervisor acknowledged in an electronic

message that claimant was authorized a return to her residence or other location of lesser or equal value during her extended TDY.

Deciding to use her periodic return travel for Chicago, Illinois instead of her PDS in San Francisco, claimant departed Washington for Chicago on July 1, 2011, and returned to Washington on July 5, 2011. She submitted a travel voucher and was reimbursed for her trip to Chicago.

The USACE Finance Center TDY Audit Division reviewed claimant's travel voucher for the Chicago travel. In issue, the Finance Center found an alleged overpayment of \$820.30 in transportation expenses associated with claimant's travel to Chicago. The \$820.30 represents the combined cost of claimant's taxi on July 1 and 5, 2011 (\$114.65 + \$109.75), her airline ticket (\$531.40), her baggage fees (\$25 + \$24), and the SATO booking fee (\$14.50).

The agency determined that claimant was wrongly paid the \$820.30 in violation of section C4678-B of the Joint Travel Regulation (JTR). On July 9, 2012, the agency initiated an action against claimant to collect the alleged debt.

Discussion

Claimant, who was on extended TDY, was entitled to periodically return in an official travel status to her PDS, or her place of abode from which she commutes daily to the PDS. Claimant's travel orders stated she was "entitled to periodic return travel home . . . and round-trip transportation to residence or other location of lesser or equal amount." Instead, of returning to her home or PDS, which was in San Francisco, claimant traveled to Chicago.

The Finance Center takes the position that claimant cannot be reimbursed for the \$820.30 in transportation expenses associated with the travel to Chicago because JTR C4678 only provides for return to the PDS, or place of abode from which the traveler commutes daily to the PDS.

Specifically addressing an employee's return to PDS during extended TDY, JTR C4678 RETURN TO PDS DURING EXTENDED TDY provides, in pertinent part:

A. General

1. For par. C4678, "extended TDY" means directed continuous travel of 3 or more weeks.

2. A traveler on extended TDY (other than deployment) may be authorized to periodically return in an official travel status to the PDS, or place of abode from which the traveler commutes daily to the PDS, on weekends or other non-workdays.

3. Reimbursement for transportation and per diem is on the same basis as TDY travel, but is not limited to the expenses otherwise payable had the traveler remained at the TDY location.

B. Authorized Return

***1. A traveler, who travels to a location (other than the PDS or place of abode from which the traveler commutes daily to the PDS) for personal reasons, (and returns to the TDY location) is not authorized transportation expense reimbursement.** The traveler is authorized only per diem-related expenses based on the TDY location per diem rate and any reimbursable expenses (APP G) that would have been allowable had the traveler remained at the TDY location (B-200856, 3 August 1981; and B-214886, 3 July 1984). Par. C4563-E.

2. A statement that return travel is authorized must be included in the travel authorization/order, or on the travel voucher if approved after the travel has been performed. **This travel is an exception to the policy of scheduling travel during regular duty hours.** Accordingly, the authorized return should be performed outside the traveler's regular duty hours or during authorized leave periods.

(Emphasis in original).

Claimant asserts she performed a cost analysis comparing the cost to fly to San Francisco versus Chicago and it was less expensive to fly to Chicago. Claimant argues that JTR C4425-A.4¹ provides that a travel order may include authority for itinerary variations to permit a traveler to travel to additional destinations, and that JTR C4564-D² allows TDY

¹ JTR C4425-A.4 provides that a TDY order may include authority for itinerary variations to permit a traveler to, among other things, "travel to additional destinations." Sometime subsequent to claimant's travel the JTR was amended to delete JTR C4425.

² JTR C4564-D provides:
D. TDY at Various Places Not Involving Return to PDS. In a situation not

at various places not involving return to the PDS, if the round-trip distance and expense are not greater than the distance and constructed travel expense between the employee's PDS and TDY location. We have reviewed JTR C4425-A.4 and C4564-D, and find these regulations do not apply to the circumstances before us, particularly in light of the clear and specific prohibition against reimbursement of transportation expenses contained in JTR C4678-B.1.

JTR C4678 specifically addresses authorization for an employee, who is on extended TDY, to "periodically return in an official travel status to the PDS, or place of abode," and be reimbursed for that travel. The regulation provides that an employee, who travels to a location other than the PDS or place of abode for personal reasons and then returns to the TDY location, is not authorized transportation expense reimbursement. Claimant traveled to Chicago, which was not her PDS or place of abode, and, therefore, per the regulations is not authorized transportation expense reimbursement.

The fact that claimant's supervisor authorized travel to a location of lesser or equal amount than her PDS is unfortunate, but does not serve as a basis for reimbursement of her transportation expenses. 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. *Jesus R. Gonzalez*, CBCA 2777-TRAV, 12-2 BCA ¶ 35,137 (citations omitted). An agency cannot pay monies in violation of regulations. *Id.*

Claimant asserts that the time she took to travel to and return from Chicago should be charged as "authorized return" as opposed to the agency's determination to characterize the time as personal leave. To the extent claimant has raised issues regarding the type of leave she should be charged, these issues fall within the purview of the Office of Personnel Management (OPM). This Board does not have jurisdiction to resolve an employee's claims

involving temporary return to a PDS, but otherwise similar to par. C4564-B, an employee upon TDY completion is allowed per diem and transportation expenses to return to resume leave at a point more distant from the TDY location than the point at which leave was interrupted, provided the round trip distance and expense are not greater than the distances and constructed travel expense between the employee's PDS and the TDY location (27 Comp. Gen. 648 (1948)).

regarding compensation and leave.³ If claimant elects to pursue leave issues she should do so with OPM.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge

³ In *Roy L. Edgar*, CBCA 1985-RELO, 11-1BCA ¶ 34,702, the Board distinguished the authority to settle an employee's claims for travel and relocation expenses, which has been assigned by statute to the Administrator of the General Services Administration and delegated by the Administrator to the Board, and the authority assigned by statute to the Director of the Office of Personnel Management (OPM) to settle an employee's claims regarding compensation and leave. *Id.* (citing 31 U.S.C. § 3702(a)(3)-(4)).