UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 4, 2013

CBCA 3309-TRAV

In the Matter of WILLIAM D. WADSWORTH

William D. Wadsworth, Santa Fe, NM, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, and Keith A. Mills, Chief, Debt Management Division, Finance Center, Army Corps of Engineers, Department of the Army, Millington, TN, appearing for Department of Army.

SHERIDAN, Board Judge.

Claimant, William D. Wadsworth, a retired annuitant (RA) of the United States Army Corps of Engineers (USACE), contests the validity of the USACE Finance Center's demand that he repay $21,608.72 in reimbursements for expenses incurred while on temporary duty (TDY).[1] The demand is made because claimant exceeded 180 days of TDY at one location without prior approval.

Background

Pursuant to an interagency agreement between the Department of Energy (DOE) National Nuclear Security Administration (NNSA) Office of Infrastructure and Facilities Management and the Department of the Army, the NNSA Site Office at Los Alamos, New Mexico, and the Albuquerque District of the Corps of Engineers (USACE SPA) entered into a memorandum of understanding (MOU) for, among other things, engineering services. Claimant, a retired USACE employee, was a member of USACE's Rehired Annuitant Cadre.

[1] USACE demanded $21,808.37; however, in documents filed with the Board, claimant states that he does not dispute the bill for $199.65. That brought the amount to be addressed by this decision to $21,608.72.

In mid-2010, claimant was approached by USACE SPA to accept an assignment working at the NNSA Los Alamos National Laboratories in Los Alamos, New Mexico. As a RA, claimant's permanent duty station (PDS) was shown on his travel authorizations as "Rehired Annuitant Cadre, Washington, DC." However, claimant's actual residence was Cloverdale, Oregon. Claimant worked at the NNSA Laboratories in RA status from June 20, 2010, through July 5, 2012.[2]

Claimant worked at the NNSA Laboratories in Los Alamos almost continuously for approximately twenty-five months with USACE SPA issuing six TDY authorizations. Each authorization was for less than 180 days. Some were issued to Los Alamos, where claimant worked, while others were issued to Albuquerque, where claimant had leased hotel lodging. According to USACE, the following travel authorizations for TDY were issued:

010537S0	June 20, 2010, through December 23, 2010, to Albuquerque (179 days)
106299S0	December 24, 2010, through January 7, 2011, to Los Alamos (15 days)
106420S0	January 8, 2011, through June 14, 2011, to Los Alamos (157 days)
110408S0	June 27, 2011, through July 26, 2011, to Albuquerque (30 days)
111619S0	July 28, 2011, through January 22, 2012, to Los Alamos (179 days)
207108S0	February 27, 2012, through August 23, 2012, to Los Alamos (179 days)

Throughout the entire time claimant was on TDY, claimant stayed at the same hotel in Albuquerque and was authorized a car rental and mileage reimbursement. Apparently, claimant traveled back and forth from his hotel in Albuquerque to the NNSA Laboratories in Los Alamos, a driving distance of approximately ninety-six miles each way.

Several months after the TDY was completed and claimant was reimbursed, the USACE Audit Division reviewed claimant's reimbursements. The Audit Division concluded claimant "was in violation of JTR [Joint Travel Regulations] C2230 and USACE guidance issued on 14 July 2011 [and] per JTR C2230, a traveler's per diem stops as of the 181st day, if the traveler is TDY in excess of 180 days without authorization/approval."

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[2] Claimant posits that, pursuant to the MOU, the entire costs of his employment, salary, overhead, travel expenses, etc., were ultimately reimbursed to USACE by the DOE and he should not be subject to the Department of Defense (DOD) Joint Travel Regulations (JTR). We are unpersuaded by this argument. Claimant's TDY expenses were paid by USACE, though USACE may later have been reimbursed for claimant's services and travel by DOE. Further, there is no indication in the record that claimant was ever subject to DOE's travel and transportation policies, or what those policies might have been relative to the claim.

Noting that there was no authorization or approval in place to allow claimant to exceed the 180-day limitation on TDY, the Audit Division adjusted claimant's travel voucher to return claimant to his residence on January 7, 2012, which the agency calculated was the 180th day of TDY.[3] The resultant adjustment to subsequent vouchers, which were changed to reflect the January 7 return, showed an overpayment to claimant totaling $21,808.37.[4] Claimant was billed for full reimbursement, and when the bills were not paid, USACE offset the bills against his retirement annuity. Claimant contests USACE's actions taken to collect $21,608.72 as overpayments.

Discussion

The basic facts of this case are straightforward. Claimant worked, primarily at the NNSA Laboratories in Los Alamos, as a USACE RA. USACE SPA placed claimant on almost continuous TDY in Albuquerque or Los Alamos from June 20, 2010, through July 5, 2012, and reimbursed claimant's expenses for the TDY he performed.[5] USACE Audit Division subsequently determined that claimant's authorizations violated the 180-day limitation on TDY provided for in the JTR and USACE guidance, and retroactively ended claimant's TDY on the 180st day. This resulted in $21,608.72 of overpayments which USACE has been collecting by offsetting claimant's retirement annuity.

Based on the limited record before us, claimant's travel orders, vouchers, and payments appear to raise a variety of unanswered questions and inconsistencies. We focus on USACE's decision that claimant should not be paid TDY after the 180th day. We note that USACE took this action well after claimant performed the travel, incurred the expenses, and had been reimbursed.

The JTR provision addressing the 180-day time limitation on TDY is currently found at JTR C2230, TDY TIME LIMITATIONS (EXCEPT TDY FOR TRAINING). At the time

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[3] It appears that the Audit Division took the position that, even though the claimant had worked in Los Alamos, after the 180th day of TDY claimant was no longer entitled to reimbursement for his TDY expenses, and the USACE was entitled to recoup the expenses it had paid after the 180th day.

[4] As noted earlier at footnote 1, claimant does not dispute $199.65 of the $21,808.37 sought.

[5] A review of the travel authorizations shows some minimal breaks in TDY status.

claimant's travel to New Mexico commenced in June 2010, the regulation was at JTR C4430, TDY TIME LIMITATIONS (EXCEPT TDY FOR TRAINING). While the wording and order between the regulations was revised somewhat, the substance of the regulations remained essentially the same: "If a traveler is TDY in excess of 180 days without authorization/approval, the traveler's per diem stops as of the 181st day (54 Comp. Gen. 368 (1974) and B-185987, 3 November 1976)." JTR C4430-C, note 1 (June 2010); JTR C2230-C.5 (August 2012). Prior to authorizing a long term TDY assignment, the regulation tasks the authorizing official (AO) with determining that the assignment is not a temporary change of station (TCS) or a permanent change of station (PCS), and warns the AO that long-term TDY should not exceed 180 consecutive days. If mission objectives or unusual circumstances require TDY at one location for more than 180 consecutive days, a written request and justification must be forwarded to an appropriate authority as soon as practicable. If the situation does not permit a determination before order issuance, the order may be issued and the case submitted immediately to an appropriate authority who must approve the order as written or direct that the order be amended to terminate the duty and return the traveler to the old station or assign a new station. Alternatively, the order may be amended to change the assignment from TDY to a PCS, fix the period at 180 or fewer days from the reporting date at the TDY station, or authorize a TCS, and ensure required tax information is in the TDY order remarks section. All these options are available to the agency until the travel is completed. However, the travel authorization is a record of vested travel entitlements that, in the absence of clear error, may not be revoked or modified retroactively to increase or decrease the rights that have become fixed after the travel has been performed. *Nina Robertson*, CBCA 1617-TRAV, 10-2 BCA ¶ 34,467 (citing *William T. Cowan, Jr.*, GSBCA 16525-TRAV, 05-1 BCA ¶ 32,906; *Andre Long*, GSBCA 14498-TRAV, 98-1 BCA ¶ 29,731).

Regarding compliance with JTR regulations, JTR C1070, APPROPRIATE ACTION FOR FAILURE TO FOLLOW THESE REGULATIONS, provides:

> A command/unit is expected to take appropriate disciplinary action when an employee and/or AO fails to follow JTR regulations. Disciplinary action should be for ***willful*** violations and may be in the form of counseling (oral/written), or other appropriate personnel means. Action must ***not*** be through refusal to reimburse. Par. C2203-A.4 states exception when reimbursement is ***not*** allowed.

JTR C1070 (June 2010); JTR C1035 (August 2012).

While the travel orders discussed above did not on their face violate the 180-day limitation on TDY set forth in the JTR, taken cumulatively the orders violated the portion of the JTR that states:

> Issuing a TDY order for 179 consecutive days, followed by a brief return to the PDS, followed by another TDY order for return to the same location is in violation of this 180-consecutive-day policy if the known, or reasonably anticipated, TDY duration was in excess of 180 days when the initial order was issued.

JTR C4430-B (June 2010); *see* JTR C2230-B.3 (August 2012) (containing almost identical language).

The agency provides no explanation for what appears to us to be a clear and willful violation of the 180-day limitation on TDY set forth in the JTR. We do not see the travel orders issued by the USACE SPA AO as simply erroneous. USACE SPA seems to have been well aware that it was violating the 180-day TDY limitation because it repeatedly issued orders for 179 days of TDY, and appears to have returned claimant to his residence only once during the approximately two years he worked at NNSA Los Alamos National Laboratories. While we can imagine that claimant's unique status as a USACE RA detailed to NNSA might have affected USACE SPA's ability to plan in advance the amount of time claimant would spend with NNSA, and that might affect the travel orders, we see no evidence of deliberation or attempt on the part of USACE to obtain an extension to the 180-day TDY limitation. Instead, we see USACE Audit Division trying to recoup $21,608.72 from the claimant for travel he already performed (and for which USACE was presumably paid under its MOU with NNSA). We find it patently unfair for USACE Audit Division, after the travel was completed and paid, to correct USACE SPA's violations on the back of claimant, particularly since claimant incurred costs while on TDY for the benefit of USACE. As the JTR says, "Action must **not** be through refusal to reimburse."

Under the circumstances presented here, we believe the action taken by USACE amounts to an impermissible refusal to reimburse claimant for travel performed.

Decision

The claim is granted. USACE is to repay any offsets it has taken against claimant's retirement annuity minus the $199.65 claimant states he does not dispute.

PATRICIA J. SHERIDAN
Board Judge