



**UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS**

July 10, 2013

CBCA 3212-RELO

In the Matter of DAVID H. PALUSZEK

David H. Paluszek, FPO Area Pacific, Claimant.

Lisa Foster, Assistant Counsel, Puget Sound Naval Shipyard & Intermediate Maintenance Facility, Department of the Navy, Bremerton, WA, appearing for Department of the Navy.

STEEL, Board Judge.

Claimant, David H. Paluszek, complains that the Government committed an administrative error in denying his daughter's educational travel from Yokosuka, Japan, to Burlington, Vermont, causing Mr. Paluszek to pay out-of-pocket for commercial airfare. Mr. Paluszek seeks reimbursement of the airfare he paid for her educational travel.

Background

David Paluszek is an employee of the Puget Sound Naval Shipyard & Intermediate Maintenance Facility (PSNS). On September 19, 2011, Mr. Paluszek accepted a position with the Yokosuka Detachment in Yokosuka, Japan, with the understanding that his dependent daughter, Mikaela (who was attending a boarding high school in Saxons River, Vermont), would be authorized educational travel (one round trip flight per year between the school and the permanent change of station (PCS) location at Yokosuka, Japan). Mr. Paluszek was issued PCS orders to Yokosuka, Japan, on January 13, 2012. His daughter remained in the United States at the boarding school in Vermont until the end of the semester in June 2012, when she joined her family at government expense under a "delayed travel" designation in the original PCS orders for dependent student travel.

On June 8, 2012, Mr. Paluszek submitted a request for his orders to be amended to allow the educational travel of his daughter back to the United States on August 1, 2012. The August 1 date was chosen because Mr. Paluszek's daughter had commitments at school beginning that week. The amended orders were received by the appropriate parties, and Mr. Paluszek obtained a signed authorization in mid-July 2012 confirming the August 1 travel date. On July 20, 2012, the amended orders were called into question by a transportation officer in Yokosuka, who interpreted federal regulations as allowing educational travel for secondary education only when the nearest Department of Defense (DoD) school is far from the employee's post or no DoD school exists. This new assertion was endorsed by a Navy transportation officer. This determination led to a denial of Mr. Paluszek's request for educational travel for his daughter.

On July 30, 2012, Mr. Paluszek paid \$2728.70 for airfare from Yokosuka, Japan to Burlington, Vermont, for his daughter's return to school. Upon realizing that educational travel was allowed under Department of State Standardized Regulations (DSSR) section 280, the agency elected to reimburse Mr. Paluszek. However, the agency was only willing to reimburse him in the amount of \$873, which was the government airfare cost from Yokosuka, Japan, to Burlington, Vermont. Mr. Paluszek seeks reimbursement of the \$1855.70 difference between the actual airfare paid and the reimbursed amount.

Discussion

By statute, the Government may pay for one round trip per year to and from a secondary or post-secondary school for dependents of employees stationed abroad. 5 U.S.C. § 5924(4)(B) (2006). Additionally, the Joint Travel Regulations (JTR) govern travel of dependents of DoD employees stationed abroad. In denying the claim for reimbursement above the \$873, the agency relies on JTR C5450-B.2, which provides that:

[W]hen the employee is eligible for return travel reimbursement, travel expenses are not to exceed the cost of the dependent travel by the most economical route (including policy-constructed airfare . . . when contract city pair airfares are not available) from the OCONUS [Outside the Continental United States] PDS [Permanent Duty Station] to the actual residence.

The agency argues that under this regulation, it is responsible only for airfare at the rate it expected to pay. In this case, the rate for a government-approved trip from Yokosuka, Japan to Burlington, Vermont was \$873.

However, when an agency has committed an administrative error in denying a travel request, leaving the employee no choice but to pay out-of-pocket for airfare, the agency may be responsible for the entirety of travel expenses. *Linda Coney*, GSBCA 13653-TRAV, 97-1 BCA ¶ 28,687 (1996). The airfare Mr. Paluszek paid represents the most economical route available to him at the time his daughter had to return to school, and the cause of the additional expenses is the agency's administrative error.

First, the agency does not claim that government transportation was available. The denial of the educational travel occurred on July 24, 2012, which was eight days before Mikaela's scheduled travel date, and the clarification did not occur until August 1, 2012, the actual date of travel, rendering the option of government transportation unfeasible. Mikaela had commitments at the school beginning the week of August 1 that would be interrupted if Mr. Paluszek had not purchased airfare commercially. Second, the agency does not claim that, considering the situation, the claimant paid anything but the most economical route available to him. The ticket was purchased two days prior to the intended date of travel. Mr. Paluszek demonstrates that he took price into account because he purchased a round-trip ticket, with no intention of using the return trip, because it was the most economical rate available at the time. Third, this situation would not have occurred without the agency's administrative error in denying the educational travel seven days earlier. Had the educational travel not been erroneously denied, government-rate transportation may have been available and used by the claimant. Since government-rate transportation was not available, the claimant was compelled to use the means necessary to have his daughter timely flown to Vermont for school in spite of the administrative error.

This matter is not one where travel approval was improperly granted by the Government and the employee seeks to avoid the cost. *See Andrew G. Chritton*, CBCA 3080-TRAV, 13 BCA ¶ 35,229. Here, the agency approved the travel of Mr. Paluszek's daughter in advance, as indicated by the correspondence between the parties, and an error in interpretation of federal regulations led to the subsequent denial of the travel. The claimant submitted the required forms for the educational travel approximately six weeks before his daughter's travel date, giving the agency ample time to process the request. The administrative error resulted from a misinterpretation by officers not involved in the initial transfer of station and unfamiliar with the educational travel entitlements within the DSSR for dependents of employees stationed overseas. Mr. Paluszek is entitled to the difference between the price of the purchased ticket and the amount already paid to him, or \$1855.70.

Decision

The claim is granted.

CANDIDA S. STEEL
Board Judge