



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 15, 2014

CBCA 3885-TRAV

In the Matter of DANIEL MOTAMED

Daniel Motamed, California, MD, Claimant.

Bonnie Petree, Travel Policy, Comptroller Group, Naval Air Warfare Center Aircraft Division, Department of the Navy, Patuxent River, MD, appearing for Department of the Navy.

KULLBERG, Board Judge.

Claimant, Daniel Motamed, brings this claim for reimbursement of per diem expenses that he incurred during his stay at a hotel near Dulles International Airport (Dulles) on the night before his departure on an early-morning flight to his temporary duty (TDY) in Seattle, Washington. Mr. Motamed's agency, the Department of the Navy (Navy), contends that he is not entitled to per diem within the vicinity of his permanent duty station (PDS), which is at the Naval Air Warfare Center Aircraft Division, Patuxent River, Maryland (PAX River). For the reasons stated below, the claim is denied.

Background

Mr. Motamed was issued TDY orders to proceed on March 10, 2014, from his PDS at PAX River to attend a meeting in Seattle, Washington. His orders did not provide for TDY at any other location. Initially, Mr. Motamed had planned to be driven to Dulles by a coworker, who was also going on TDY to the same meeting in Seattle. They had planned to drive to Dulles at 4:00 a.m. on March 11, 2014, in order to be on time for a 6:00 a.m. flight, but the coworker's travel orders were changed. Mr. Motamed determined that driving

by himself to Dulles from his home in the early morning, when it was still dark, would be unsafe because of his poor night vision. Instead of leaving his home on the morning of his flight, Mr. Motamed drove to a hotel near Dulles on March 10, 2014, and stayed there overnight. He departed on his scheduled flight for Seattle the next morning.

After returning from TDY, Mr. Motamed submitted a claim for his travel expenses. His claim included per diem for the cost of his stay at a hotel near Dulles. His lodging, meals, and incidental expenses for his stay near Dulles totaled \$253.31. The Navy denied that portion of his claim because he was not authorized TDY at Dulles, and Dulles was within the vicinity of his PDS at PAX River.

Discussion

The issue in this case is whether Mr. Motamed's concerns about his night vision and the safety of driving while it was still dark in order to catch an early-morning flight entitle him to be reimbursed for his stay at a hotel near Dulles the evening before his flight. Statute authorizes reimbursement for lodging only when an employee is "traveling on official business away from the employee's designated post of duty, or away from the employee's home or regular place of business." 5 U.S.C. § 5702(a)(1) (2012). The Federal Travel Regulation (FTR), which applies to Mr. Motamed, states the following:

When am I eligible for an allowance (per diem or actual expense)?

When:

- (a) You perform official travel away from your official station, or other areas defined by your agency;
- (b) You incur per diem expenses while performing official travel; and
- (c) You are in a travel status for more than 12 hours.

41 CFR 301-11.1 (2013) (FTR 301-11.1). The Joint Travel Regulations (JTR), which also apply to Mr. Motamed, provide that per diem is not authorized "[f]or travel/TDY performed within the PDS limits or at/within the vicinity of, the place of abode (residence) from which the traveler commutes daily to the official station." JTR C4100-A.1. Under the JTR, the Department of Defense (DoD) has the authority to designate local commuting areas. *Id.* C2800-A. DoD has established that the Washington local commuting area

encompasses PAX River, which is in St. Mary's County, Maryland, and Dulles, which is in Fairfax and Loudoun Counties in Virginia. DoD Instruction 4515.14 (June 28, 2013).

The JTR provides a limited exception to the general rule that an employee is not entitled to receive per diem within the vicinity of his or her PDS. An employee can be paid per diem "in certain weather related circumstances beyond the traveler's control after return to the PDS vicinity from the TDY location." JTR C4100-C.1. This Board, consequently, has recognized that an employee who returns from TDY and is unable for safety reasons to travel from an airport to his or her home will be reimbursed for staying at a hotel near the airport. *See Michael N. Heinz*, CBCA 2696-TRAV, 12-1 BCA ¶ 34,999, at 171,989; *Mark E. Byers*, CBCA 2371-TRAV, 11-1 BCA ¶ 34,763, at 171,094.

In this case, there was no weather-related problem or any other safety issue that necessitated Mr. Motamed's stay near Dulles. Mr. Motamed has represented that he drove to Dulles the day before his flight because a coworker was no longer available to drive him to the airport. Although Mr. Motamed claims that he has poor night vision that made it unsafe to drive to Dulles, he had control over the circumstances of his travel. The Navy has represented that Mr. Motamed could have taken a flight the day before on March 10, 2014. Mr. Motamed has offered no explanation as to why he could not have changed his travel plans, but, instead, he contends that "[i]t was advantageous to the Government to fly on 3/11 and not incur additional per diem charges." However, Mr. Motamed is not entitled to reimbursement because he believed that staying at Dulles would have saved the Government the expenses he would have incurred by changing his flight reservations and leaving a day earlier. *See Dane Hanson*, CBCA 2666-TRAV, 12-2 BCA ¶ 35,071, at 172,266-67 (PAX River employee who stayed at a hotel near Dulles in order to board a flight the next day was not entitled to per diem because he believed that staying near Dulles was a better use of time and financial resources instead of returning home after his flight from Reagan National Airport was canceled).

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge