



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 4, 2014

CBCA 3995-TRAV

In the Matter of TOMILA K. HEARON

Tomila K. Hearon, Calera, OK, Claimant.

Shirley L. Autry, Deputy Director, Finance Center, United States Army Corps of Engineers, Department of the Army, Millington, TN, appearing for Department of the Army.

KULLBERG, Board Judge.

Claimant, Tomila K. Hearon, brought this claim after her agency, the United States Army Corps of Engineers (USACE), audited her travel claim and demanded that she repay that portion of her previously reimbursed lodging expenses that exceeded the daily government lodging rate while she was on temporary duty (TDY) in Washington, D.C. The total amount of indebtedness asserted by USACE was \$984.72. For the reasons stated below, the Board finds that the debt is not legally enforceable and the claim is granted.

Background

Ms. Hearon was issued TDY orders to attend training from June 1 to June 4, 2014, in Washington, D.C. After attempting unsuccessfully to obtain lodging at the government rate of \$224, she was informed that the only room available was a two-bedroom suite at a nightly rate of \$439, which she then reserved. A request for an actual expense allowance (AEA) for Ms. Hearon's lodging was approved in a memorandum dated March 12, 2014. That memorandum stated, in pertinent part, the following:

The standard lodging rate of \$224 in Washington, [D.C.] for the

travel period of 6/1-4/2014 is unavailable at any of the approved lodging facilities on the training schedule. Rooms are available at the rate of \$439.00 per night at the Residence Inn which is .5 miles from the training facility. This rate is 230% above the standard rate and meets current [Joint Travel Regulations (JTR) not to exceed] 300%.

Other lodging facilities have been contacted with either no vacancies or no government rates for any of the nights required for this training.

Ms. Hearon's request for an AEA was approved, and her TDY orders stated "actual expense allowance authorized at TDY site."

During her TDY, Ms. Hearon stayed with three members of her family in a two-bedroom suite at the hotel where she had made her reservations. Her nightly rate at the hotel was \$439. After returning from TDY, she submitted her travel claim and received reimbursement for the cost of her lodging.

A subsequent audit of Ms. Hearon's travel claim determined that she should have been reimbursed for lodging at only the government rate of \$224. By letter dated July 10, 2014, USACE demanded that Ms. Hearon pay the Government \$984.72, which was the amount that her actual lodging expense exceeded the government rate for the period of her stay. Ms. Hearon then filed her claim with the Board.

After the docketing of this matter, the Board received an agency report from USACE and Ms. Hearon's reply. USACE contended that "[d]ue to the fact that additional nonofficial personnel would be accompanying her during her TDY, [actual expense lodging plus] should not have been authorized for this purpose." In response to the agency report from USACE, Ms. Hearon submitted an affidavit from an administrative officer at her place of work that stated, in part, the following:

I . . . was present on 06 Mar 14 when Tomila K. Hearon began calling various lodging facilities in Washington [D.C.] to secure overnight accommodations for her approved training.

Ms. Hearon spoke with me several times and stated that she was not having any success finding single available rooms with a government rate for the dates of 01-04 [June] 14 near the [Department of Agriculture] Training Center. Due to high

occupancy rates for the dates required, I advised her that it would be necessary to request Actual Expense Allowance for lodging.

Ms. Hearon was able to determine availability at the Residence Inn . . . for a nightly rate of \$439.00. She did inform me that it was a two bedroom suite but the hotel did not have a single room available at the time. I suggested that it would be prudent to reserve the room as soon as possible due to the lack of availability elsewhere.

Upon arrival, Ms. Hearon, asked the clerk if a single room at government rate was available. She was once again told that there were no rooms at that rate available and that she would need to take the reserved two bedroom suite or seek lodging elsewhere. She called me and I agreed that she should accept the rate since she had already been approved for the AEA and the cost did not exceed the JTR regulation of 300% above standard rate.

Discussion

The issue in this matter is whether USACE may retroactively change Ms. Hearon's TDY orders from authorizing actual expense for her lodging to allowing only reimbursement at the government rate. Statute provides the following:

(a)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee, when 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 (if the employee is described in section 5703 of this title), is entitled to any one of the following:

(A) a per diem allowance at a rate not to exceed that established by the Administrator of General Services for travel within the continental United States, and by the President or his designee for travel outside the continental United States;

(B) reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the

Administrator for travel within the continental United States or an amount established by the President or his designee for travel outside the continental United States.

5 U.S.C. § 5702(a)(1) (2012). In accordance with statute, Ms. Hearon's TDY orders authorized her to be reimbursed for her actual lodging expense instead of the government rate.

The Federal Travel Regulation (FTR), which is promulgated by the Administrator of General Services pursuant to 5 U.S.C. § 5707, provides that an employee may be reimbursed for actual TDY lodging expenses up to 300% of the government rate. 41 CFR 301-11.30(a), -11.303 (2013). The JTR, which applies to civilian employees of the Department of Defense, also allows reimbursement for actual expenses up to 300% of the government rate. JTR C4310-A. Ms. Hearon's nightly rate for lodging, \$439, was within 300% of the government rate of \$224 per night, so her reimbursement for lodging was within the amount allowed under the FTR and JTR.

In this case, USACE seeks to reduce Ms. Hearon's allowable reimbursement from her actual lodging expense, which was authorized by her TDY orders, to the government rate. As a general rule, TDY orders shall not be retroactively changed to increase or reduce an employee's reimbursable expenses. *See Todd E. Johanesen*, CBCA 3124-TRAV, 14-1 BCA ¶ 35,539, at 174,163; *Nidavan Kanasawadse*, GSBCA 16508-TRAV, 05-1 BCA ¶ 32,913, at 163,044; *Arjumand Wohra Khan*, GSBCA 16356-TRAV, 04-2 BCA ¶ 32,697, at 161,782; *Betty D. Gardner*, B-214482 (Sept. 7, 1984). That rule applies "unless the order was erroneous on its face, was in conflict with a law, regulation, or agency instruction, or was contrary to the agency's definite intention when the orders were issued." *Jack J. Pagano*, CBCA 1838-TRAV, 10-1 BCA ¶ 34,408, at 169,877 (citing *Mark N. Roush*, CBCA 1706-TRAV, 10-1 BCA ¶ 34,313, at 169,494 (2009)). "[W]hen all or part of the particular order involves an exercise of discretionary factors by the authorizing official, the order will be presumed correct in the absence of clear evidence of misapplication of those factors." *Id.* (citing *Peter R. Maloney*, B-229466 (Dec. 5, 1988)).

The Board does not find that Ms. Hearon's TDY orders were issued contrary to law, regulation, or policy so as to justify a retroactive change to those orders. USACE argues that JTR C4130-A.5 states that "a traveler must not purposely accept more spacious lodging to provide lodging for other nonofficial travelers." In order for USACE to demonstrate that Ms. Hearon acted contrary to that JTR provision, it would be necessary to establish that Ms. Hearon reserved a two-bedroom suite when a smaller room was available at the government rate and that she did so in order to accommodate family members. The record, however, establishes that Ms. Hearon reserved a two-bedroom suite because that was the

only room available when she made her reservations, and USACE authorized the actual expense of her lodging in her TDY orders for that reason. Upon arriving at her hotel, Ms. Hearon again attempted, unsuccessfully, to obtain a room at the government rate. USACE has not refuted the documentary evidence submitted by Ms. Hearon. There is no evidence that Ms. Hearon deliberately chose to reserve a room that was more spacious than necessary for one person in order to accommodate family members when a smaller hotel room was available. The fact that family members did stay with her during her TDY does not justify drawing the negative conclusion that she did so contrary to the JTR. *See Jack J. Pagano*, 10-1 BCA at 169,878 (action by agency to recover employee's reimbursed TDY expenses not allowed when agency relied on an after-the-fact investigation in which the investigator drew unsupported negative conclusions from facts provided by claimant).

Decision

The Board finds that USACE does not have a legally enforceable debt against Ms. Hearon, and she shall retain the previously reimbursed amount of \$984.72.

H. CHUCK KULLBERG
Board Judge