



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 20, 2014

CBCA 3593-TRAV

In the Matter of TODD CHANDLER

Todd Chandler, New York, NY, Claimant.

Maria C. Montilla, Director, Accounting Management Group, Office of Financial Management, Department of Health and Human Services, Baltimore, MD, appearing for the Agency.

SHERIDAN, Board Judge.

Claimant, Todd Chandler, an employee of Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), on temporary duty travel (TDY) was correctly denied \$45 in additional expenses related to parking his personally owned vehicle (POV) in the more expensive daily parking lot at the airport terminal.

Background

Claimant is a member of a collective bargaining unit and is covered by the collective bargaining agreement (CBA), Master Labor Agreement (MLA) between the Centers for Medicare & Medicaid Services and the American Federation of Government Employees, Local 1923 (effective December 10, 2010). Both parties aver that the Civilian Board of Contract Appeals (CBCA) has jurisdiction to decide this matter, and the Board agrees, because article 8, section 5(m) of the MLA states:

As soon as practical, the Agency agrees to notify employees as to why any claims for travel expenses are disallowed. Notices of disallowance will be in writing and will provide a detailed explanation for the disallowance. An employee may request reconsideration to the Director, Office of Financial Management, if the employee has additional facts or documentation to support his/her request for reconsideration. If, after reconsideration, the claim is still

denied, the employee may submit the claim for adjudication to the U.S. General Services Administration Board of Contract Appeals [GSBCA] in accordance with 48 CFR Part 6104.^[1]

Claimant was authorized to conduct TDY to Bismarck, North Dakota for the week beginning August 26, 2013. He drove his POV to the airport terminal and parked in the daily parking lot (\$20 per day), as opposed to the long-term parking lot (\$11 per day). When claimant submitted his claim for parking at the daily lot, his travel approving official questioned the higher cost. Claimant argued that the use of the POV and parking at the terminal was cheaper than if he had taken a taxi to the airport; therefore, pursuant to the MLA, he should be reimbursed the additional \$45, the cost for using the daily parking lot.

Upon receiving clarification from CMS' Division of Travel Policy and Operations regarding the policy for reimbursement of parking fees at common carrier terminals, the travel approving official denied the additional \$45 in expenses associated with claimant's use of the more expensive daily parking lot on September 12, 2013. In denying the additional expense for the daily parking lot, the agency stated:

In accordance with the MLA and the FTR [Federal Travel Regulation], the employee may choose to drive [his] POV, [to the airport], park at that airport, and be reimbursed those expenses, not to exceed the cost of taxi fare. However, the employee is also expected to exercise prudence when choosing the appropriate parking facility [to] use. The employee would need to provide documentation supporting the use of the daily parking lot at a cost of \$20 per day [as] prudent versus parking in the long-term lot which would have cost \$11 per day. Failure to adequately show the expense for daily parking at \$20 per day is prudent, the agency should limit reimbursement to \$11 per day for the long-term lot. The employee may choose to stay in the higher priced daily lot, but they will be responsible for paying for the additional cost incurred.

It is not clear from the record precisely when claimant explained to the agency his reasons for selecting the more expensive daily parking lot. According to claimant, for the August 2013 trip to North Dakota, he had to manage a rolling bag containing documents and clothes, a shoulder bag containing a laptop and additional documents, and a garment bag containing suits for the week. Claimant argued to the agency that he has been traveling for

¹ The CBCA assumed jurisdiction for travel and relocation claims pursuant to a delegation of authority from the Administrator of General Services when when civilian boards of contract appeals were consolidated in 2007.

the agency for thirteen or more years and in the last eight years has traveled at least four times a year on agency business “incurring and being reimbursed for the same parking expense until now.” Claimant also refers to some past orthoscopic knee surgery in October 2010, and a request for a rolling briefcase for road assignments. Rolling briefcases were provided to claimant’s office though the normal office supply process, and made available, with claimant using one when it is available. In his statement of December 16, 2013, claimant’s supervisor opines that “because [claimant’s] knee still gives him trouble periodically, it is advisable that he avoid walking excessive distances while carrying heavy batches of review materials. This includes the kind of walks that may be necessary in the most distant parking lots of airports.”

Discussion

The CBCA has jurisdiction to decide this matter, although typically it does not have jurisdiction to decide travel and relocation claims where an employee’s employment conditions are governed by a CBA between a union and agency management, because the Civil Service Reform Act mandates that procedures specified within a MLA be the “exclusive administrative procedures for resolving grievances which fall within its coverage.” 5 U.S.C. § 7121(a)(1) (2006).² The MLA to which claimant is subject expressly carves out an exception to the grievance procedure: an employee may submit a claim for adjudication to this Board.

Article 8, section 1 of the MLA addresses the general principles that will be applied for travel away from an employee’s official duty station. Section 1.A states that “when travel is required, employees will be compensated for their time and expenses in accordance with applicable law, Government-wide rule or regulation, including 5 CFR Parts 550-551 and 41

² The Court of Appeals for the Federal Circuit consistently has held that if a matter is arguably entrusted to a CBA grievance procedure, no review outside that procedure may take place, unless the parties to the agreement have explicitly and unambiguously excluded that matter from the procedure. *Dunkleberger v. Merit Systems Protection Board*, 130 F.3d 1476 (Fed. Cir. 1997); *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992); *Carter v. Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990) (en banc). On this basis, both our Board and the GSBCA, our predecessor board for travel and relocation claims, dismissed claims the resolution of which is governed by CBA provisions. *Kenneth L. Clemons*, CBCA 3067-TRAV, 13-1 BCA ¶ 35,305; *John A. Fabrizio*, CBCA 2917-TRAV, 13-1 BCA ¶ 35,199 (2012); *Kelly A. Williams*, CBCA 2840-RELO, 12-2 BCA ¶ 35,116 (and cases cited therein).

CFR Chapters 300-301 (Federal Travel Regulation [FTR]) and this Article.” Article 8, section 1.C requires that “[a]n employee must exercise the same care in incurring travel expenses that a prudent person would exercise if traveling on personal business.” Article 8, section 7 addressing methods of transportation provides:

A. Employees are expected to travel using the method of transportation that is most advantageous to the Government as determined by the Agency. When an employee does not travel by the method required by the Agency, any additional expenses will be borne by the employee.

....

F. When using a POV, employees may request and be reimbursed for parking fees at common carrier terminal not to exceed the cost of taxi fare to/from the terminal.

The agency acknowledges that FTR 301-10.308 allows an employee to elect to drive his or her POV to the airport and park at the airport, and be reimbursed the parking fee as an allowable transportation expense not to exceed the cost of taxi fare to/from the terminal. FTR 301-10.308 provides:

What will I be reimbursed if I park my POV at a common carrier terminal while I am away from my official station?

Your agency may reimburse your parking fee as an allowable transportation expense not to exceed the cost of taxi fare to/from the terminal.

41 CFR 301-10.308 (2013). FTR 301-2.3 addresses the standard of care an employee must use in when incurring travel expenses:

What standard of care must I use in incurring travel expenses?

You must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business.

41 CFR 301-2.3.

As the agency correctly points out, the Board has observed that it is a “fundamental, overarching principle that a federal civilian employee traveling on official business ‘must exercise the same care in incurring expenses that a prudent person would exercise if traveling

on personal business.” *Jack L. Hovick*, CBCA 655-TRAV, 07-2 BCA ¶ 33,616, at 166,483 (quoting 41 CFR 301-2.3 (2006)). In *Hovick*, claimant asserted that he was entitled to be reimbursed the expenses of parking in a covered parking garage, as opposed to being limited to the expenses of the less expensive surface parking lot that was authorized by the agency, because the round-trip taxi fare between his residence and the airport terminal would have cost more than driving his POV and parking it in the covered parking garage. The Board rejected claimant’s reasoning and denied the claim for additional parking expenses. *Id.*

Both the FTR and the MLA are based on the principle that a federal civilian employee traveling on official business must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. The fact that the MLA and the FTR both allow an employee to be reimbursed parking fees at a common carrier terminal, not to exceed the cost of taxi fare to/from the terminal, does not obviate the need for that employee to act as a prudent person in incurring those fees. Furthermore, the MLA provisions at issue here do not give claimant different or additional travel rights that are not available to non-collective bargaining unit employees under the FTR. There is little evidence that claimant attempted, in any meaningful way, to provide proof to the agency that parking in the daily lot was prudent.

Claimant, alluding to a special need, has attached a statement from his supervisor referencing an October 2010 orthoscopic knee surgery, and speculating that claimant needed to use the daily lot to accommodate some unidentified new or continuing problem with his knee. There is no evidence showing what this problem might be. The agency notes that “at no time did [claimant] mention that he had a medical condition that may require the agency to provide a reasonable accommodation.” It does not appear from the record that claimant ever approached the agency about accommodating a knee-related special need by authorizing parking in the daily parking lot.

FTR 301-13.1 addresses the policy for providing additional travel expenses for an employee with a special need and states:

What is the policy for paying additional travel expenses incurred by an employee with a special need?

To provide reasonable accommodations to an employee with a special need by paying for additional travel expenses incurred.

41 CFR 301-13.1. *See also A. Darryl Swain*, CBCA 1795-TRAV, 10-1 BCA ¶ 34,394.

According to the FTR, an agency will pay additional travel expenses:

When an additional travel expense is necessary to accommodate a special physical need which is either:

- (a) Clearly visible and discernible; or
- (b) Substantiated in writing by a competent medical authority.

41 CFR 301-13.2.

The fact that claimant's office purchased some rolling briefcases for general office use, based on claimant's request, does not sufficiently justify the claimant's need to use the more expensive daily parking lot in August 2013. Claimant's supervisor's opinion that because claimant's knee "still gives him trouble periodically, it is advisable that he avoid walking excessive distances while carrying heavy batches of review materials," does not prove a special need exists, particularly since it does not appear that the need is clearly visible and discernible, or substantiated in writing by a competent medical authority. That claimant may have, at other times, been compensated for parking in the daily lot is not compelling. Past errors that may have been made in interpreting the FTR are not a justification for continuing to make a similar mistake.

In summary, claimant has neither made a compelling argument nor provided probative evidence that he actually sought or needed to park in the daily lot to accommodate a special physical need, and a prudent employee would have parked in the less expensive long-term parking lot.

Decision

The claim is denied.

PATRICIA J. SHERIDAN
Board Judge