



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 25, 2015

CBCA 4737-TRAV

In the Matter of RICHARD E. SMITH

Richard E. Smith, Seattle, WA, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

SHERIDAN, Board Judge.

The Department of the Army (Army or agency) audited temporary duty travel (TDY) expenses incurred by claimant, Richard E. Smith, associated with two TDY assignments for the United States Army Corps of Engineers (USACE) and found claimant was overpaid TDY expenses. Claimant disputes the amounts assessed by the agency and asserts that his actual overpayment for the San Antonio, Texas, TDY should be calculated as \$281.50, and the actual overpayment for the Frederick, Maryland, TDY should be calculated as \$116.75.

Background

The Audit Support Office reviewed and audited claimant's travel orders, vouchers, and expense receipts for long-term TDY to Washington, D.C., from claimant's permanent duty station (PDS) at the USACE Washington District, Seattle, Washington. Claimant had been assigned 179 days TDY, from January 9 through July 6, 2015. During his 179-day detail to Washington, D.C., claimant was directed to perform official TDY in San Antonio, Texas, from January 25 through January 30, 2015 and to Frederick, Maryland, from February 17 to February 19, 2015. Claimant submitted three vouchers to recover his long-term TDY expenses, and his TDY expenses for San Antonio and Frederick.¹ When claimant filed

¹ In this decision the voucher for the long-term TDY is referred to as voucher one; the vouchers for the San Antonio and Frederick TDY are referred to as vouchers two and three.

vouchers for the San Antonio and Frederick TDY he failed to include remarks that he had been ordered to perform these TDY assignments while he was on the long-term TDY assignment. Claimant was reimbursed full per diem and meal and incidental expenses (M&IE) claimed for the San Antonio and Frederick TDY as well as for the overlapping long-term TDY.

The agency audits of the three TDY vouchers determined that claimant was overpaid lodging and M&IE on his long-term TDY voucher. The agency determined that claimant was improperly reimbursed at the \$132.75 reduced flat-rate per diem in Washington, D.C., while he was on TDY in San Antonio and Frederick, and had also been overpaid M&IE for the periods he was on TDY in San Antonio and Frederick.

The agency states that it relied on Joint Travel Regulation (JTR) 4250 and USACE's "FAQs [Frequently Asked Questions] Regarding Recent JTR Changes, V3, 11/13/2014 (effective 11/1/2014)," for making the adjustments.

JTR 4250 addresses the long-term TDY flat-rate per diem that is applicable to this case and provides, in pertinent part:

A. General

1. A reduced flat-rate per diem applies when a traveler is assigned long-term TDY (more than 30 days at one location) except as indicated in par. 4250-B.

a. Long-term TDY for a duration of 31-181 days at a single location is authorized at a flat-rate of 75% of the locality rate, payable for each full day of TDY at that location.

....

B. Exceptions and Additional Factors. The following circumstances may affect per diem reimbursement:

....

3. Long-term TDY flat-rate per diem applies to TDY at the specified location. If a traveler is sent TDY to another location, per diem computed using the 'Lodging Plus' method, for that area, applies. If the additional TDY period is considered a

second long-term TDY period, then the rules in par. 4250-A1 apply to the second TDY. [Emphasis added.]

4. Dual lodging is authorized when TDY to another location for less than 30 days. See par. 4145.

....

C. Retained lodging expenses during a traveler's authorized absence may be reimbursed as a miscellaneous reimbursable expense not to exceed the lodging portion of the reduced per diem rate.

USACE applied an example set forth in JTR 4250-C.3 to calculate claimant's entitlements. The agency had been paying claimant a long-term lodging rate of \$132.75, which was 75% of the \$177 daily lodging rate for Washington, D.C. Noting that claimant had rented an apartment in the Washington, D.C., area for \$1700 a month, USACE indicates that claimant's actual cost was only \$56.66 per day for lodging. The agency asserts that while on short-term TDY in San Antonio claimant should only be paid at the actual cost of \$56.66 per day and not at the \$132.75 reduced flat-rate. The agency determined on this basis that it had overpaid claimant \$552.04 on voucher two (San Antonio) and \$215.68 on voucher three (Frederick).

Discussion

Claimant does not dispute the facts of this matter and states that his dispute centers on the position of the agency that the JTR requires the agency to reduce the flat-rate lodging per diem for the retained lodging in Washington, D.C., while he was on official business in San Antonio and Frederick. Claimant posits that although JTR 4250-C may apply to situations where a traveler is taking leave or on some other form of "authorized absence," it is not applicable to his situation where he was in San Antonio and Frederick performing TDY. Claimant maintains that "travelers on long-term TDY in dual travel status should [continue to] receive the full flat-rate lodging at their primary TDY location" while on short-term TDY elsewhere.

We agree with claimant. The agency misconstrued the JTR, using JTR 4250-C.3, which applies to an "authorized absence," instead of JTR 4250-B.3, which applies when a traveler on long-term TDY is sent on TDY to another location. JTR 4250-B.3 directs that, when a traveler on long-term TDY is sent TDY to another location, the long-term TDY flat-rate per diem continues to apply at the specified long-term TDY location and that per diem for the additional location is to be paid as well, computed using the lodging plus method.

Under the lodging plus method, the traveler is entitled to the “actual lodging cost, not to exceed the maximum rate established for the TDY location,” provided the travel is for more than twelve hours and overnight lodging is required. 41 CFR 301-11.100 (2014).

During his TDY in San Antonio and Frederick, therefore, claimant was entitled to be reimbursed for his retained lodging at the reduced long-term TDY flat-rate applicable to Washington, D.C., as well as his actual lodging costs incurred in San Antonio and Frederick, not to exceed the maximum rate established for those locations.

Decision

This matter is returned to the agency for recalculation of claimant’s lodging entitlements in accordance with this decision.

PATRICIA J. SHERIDAN
Board Judge