



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 4, 2015

CBCA 4738-TRAV

In the Matter of BRIAN TSE

Brian Tse, Washington, DC, Claimant.

Bonnie Arthur, Deputy Senior Travel Official, Office of the Assistant Secretary for Preparedness and Response, Department of Health and Human Services, Washington, DC, appearing for Department of Health and Human Services.

SOMERS, Board Judge.

Brian Tse is a health scientist employed by the Biomedical Advanced Research and Development Authority (BARDA), a division of the Office of the Assistant Secretary for Preparedness and Response (ASPR) within the Department of Health and Human Services (HHS). At the request of his agency, Mr. Tse changed his flight to return early from his scheduled annual leave to his permanent duty station (PDS) in order to conduct urgent official business.

Mr. Tse has submitted a claim to the agency, seeking reimbursement for the cost of the fee associated with changing his original return ticket to the earlier date. The agency denied his claim, noting that it could not identify any authority to reimburse Mr. Tse for the expenses incurred. However, the agency submitted Mr. Tse's claim to us, seeking confirmation that it made the correct determination in denying his claim. For the reasons set forth below, we find that the agency does indeed possess the authority to reimburse Mr. Tse for his claimed expenses.

Background

On December 19, 2014, HHS informed Mr. Tse that the date of an important panel review meeting had “unexpectedly been changed from Friday, January 2, 2015, to Monday, December 29, 2014.” The agency had changed the date of the meeting to address an “emergency situation” related to the spread of the Ebola virus in West Africa. The agency informed Mr. Tse that his attendance was “required on December 29th to lead the review meeting.” Unfortunately, in anticipation of preauthorized annual leave, Mr. Tse had booked round-trip plane tickets in October for travel between Washington, D.C., and Chicago, Illinois, from December 23 to December 30, 2014.

Mr. Tse agreed to return to Washington, D.C., early to attend the meeting and he informed the agency that doing so would require him to change his originally scheduled return flight from December 30 to December 28, 2014. Mr. Tse asked if the agency would cover the cost associated with changing the flight. The agency informed him on December 19, 2014, that it was in the process of securing his return flight and would confirm his new flight itinerary on December 22, 2014. Mr. Tse followed up with his agency regarding his travel arrangements before close of business on December 22, 2014, and was told that the agency was still in the process of making the travel arrangements.

On December 23, 2014, Mr. Tse departed for Chicago on his 8:00 a.m. flight as originally scheduled. At 10:56 a.m., after Mr. Tse had already departed for Chicago, his agency informed him by email that it would not be paying for any travel expenses because the agency determined that “[t]he [G]overnment is not authorized to [pay for] travel [expenses of] someone to their Official Duty Station.” After consulting with the Travel Branch division of HHS’s Office of the Chief Operations Officer, Mr. Tse decided to make the necessary adjustments to his travel plans and submit a voucher for reimbursement upon his return.

Mr. Tse paid the required change fee and returned to Washington, D.C., on December 28, 2014, and attended the emergency meeting on December 29, 2014. Mr. Tse sought reimbursement from his agency for the \$245 fee incurred to change his flight. The agency denied his claim and submitted an appeal on his behalf to this Board.

Discussion

The Government is required by statute to reimburse employees “for the actual and necessary expenses of official travel.” 5 U.S.C. § 5702(a)(1)(B) (2012). The Federal Travel Regulation, which implements this statute, limits the payment of travel expenses to those “necessary to accomplish . . . [the agency’s] mission in the most economical and effective

manner. . .”. 41 CFR 301-70.1 (2014). These regulations are further supplemented by the HHS Travel Policy Manual (the manual), which states in relevant part:

5.4.2.3 Orders for Official Duty While in Leave Status Away from Official Station

Employee Chooses or is Directed to Return to Official Station

When an employee proceeds to a point away from their official station on annual leave and during such leave, they are required to perform TDY [temporary duty] and are required or choose to return to their official station after completion of the TDY, the employee may be reimbursed only for the difference between:

1. What it cost them to return to their official station via the TDY location; and
2. What it would have cost them to return to their official station directly from the place where they were on leave.

Employee Chooses to Resume Leave Status

Travel expenses not to exceed the cost of travel to and from the place where the leave was interrupted to the place where the duty was performed may be authorized, if the following conditions apply:

1. The employee is on authorized leave of absence away from their official station; and
2. The authorized leave of absence is temporarily interrupted because they are recalled to duty at their official station; or
3. The authorized absence is interrupted because they are ordered to perform TDY at another place; and
4. The employee wishes to resume leave status immediately after the completion of official duty; and
5. A statement is included in the travel order that an administrative determination was made that it would be unreasonable to require the employee to assume the additional travel expense in compliance with the TDY.

HHS Travel Policy Manual § 5.4.2.3 (2014) (grammatical errors as set forth in original text).

The manual authorizes the agency to pay for travel expenses, not to exceed the cost of travel to and from the place of leave, when 1) the employee is on official leave of absence

away from the employee's PDS and 2) the leave is interrupted because the agency requires the employee to return to the PDS for official duty. *Id.* The facts presented by Mr. Tse's claim satisfy this criteria. Mr. Tse was on authorized leave of absence away from his official duty station. His leave was interrupted when he was recalled to duty at his official station. The agency is authorized by the manual to pay the fee Mr. Tse incurred to change his flight.¹

The agency explained that its interpretation of the manual required the employee to return to the location where he was on leave in order to receive any reimbursement for travel expenses:

[T]he presumption is that if we pay for an employee to come to the official duty station AND to send them back on leave, they are still responsible for returning to their duty station on completion of their leave. If we just pay for the employee to return off of leave to their official duty station, the government is taking on that responsibility, which is not allowed.

The agency's interpretation appears to be based upon its research of Comptroller General decisions. *See, e.g., Albert L. Modiano*, B-245519 (Feb. 18, 1992) ("The general rule is that when an employee proceeds to a point away from his official duty station on annual leave, he assumes the obligation of returning at his own expense."). Other Comptroller General decisions held to the contrary. *See, e.g., Luella S. Howard*, B-141969 (Aug. 20, 1969) (concluding that an agency could cover the travel expenses of an employee from a leave location to the PDS when there was an "urgent official need" for the employee's services and no agency regulation establishing other unfulfilled criteria). The agency's interpretation of the manual is consistent with the general rule that the Government will not pay for travel expenses associated with an employee's return to a PDS from leave. However, the manual does authorize payment of additional travel expenses incurred by an employee to return from leave early at the Government's request.² Mr. Tse seeks only the fee charged

¹ If Mr. Tse had returned to Chicago to resume his leave status with orders that contained an administrative determination that it would be unreasonable for Mr. Tse to bear additional travel costs, the agency would also have been authorized to pay for the travel expenses incurred, up to the cost of travel between Chicago and Washington, D.C., to allow Mr. Tse to resume leave. *See* HHS Travel Policy Manual § 5.4.2.3.

² This reasoning is similar to our decision in *Diane M. Balderson*, where we granted the claimant's request for reimbursement of a non-refundable airline baggage fee incurred when her temporary duty travel was canceled "as the result of a legitimate change in government requirements." CBCA 2417-TRAV, 11-2 BCA ¶ 34,811, at 171,312 (citing *William J. Dearing*, GSBCA-TRAV, 98-2 BCA ¶ 29,895).

by the airline to change his flight, which is an additional cost that he incurred when he altered his travel arrangements to accommodate an agency need. The responsibility for the original cost of the flight remains with Mr. Tse.

Decision

The agency interrupted Mr. Tse's approved annual leave while he was away from his PDS when it recalled him to conduct urgent official business. The agency is authorized to reimburse Mr. Tse for the additional travel expenses he incurred to accommodate the agency.

JERI KAYLENE SOMERS
Board Judge