



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 15, 2015

CBCA 4901-TRAV

In the Matter of ORLANDO BOAS LOBELO

Orlando Boas Lobelo, Dunellen, NJ, Claimant.

Davis Young, Military Sealift Command, Norfolk, VA, appearing for Department of the Navy.

SOMERS, Board Judge.

Claimant, Orlando Boas Lobelo, seeks reimbursement in the amount of \$1296, for airfare and other related expenses incurred when he traveled from Japan to the United States to receive treatment for an injury incurred on duty. Because Mr. Lobelo has not filed a claim with the agency for the initial determination of reimbursable travel expenses, his claim here is premature.

Background

Mr. Lobelo works for the Military Sealift Command (MSC), Department of the Navy, as a “non-officer civilian marine employee.” In March 2014, while serving aboard the USNS WALLY SCHIRRA, near Okinawa, Japan, Mr. Lobelo became injured. A medical doctor evaluated Mr. Lobelo and determined that he was “not fit for duty.” Mr. Lobelo received travel orders, a cash advance of \$1000, and instructions to make his own travel arrangements to San Diego, California.

Mr. Lobelo’s travel orders instructed him to use the Navy Commercial Travel Office for travel arrangements, and mandated that he fly on a U.S.-flag carrier, if available. Rather than contacting the Navy Commercial Travel Office, Mr. Lobelo relied upon a hotel

receptionist to make his travel arrangements. He booked his travel from Okinawa, Japan, to San Diego, California, with Malaysia Airlines, a foreign-flag airline. Mr. Lobelo did not obtain advance authorization or approval to use the foreign-flag airline.

When Mr. Lobelo did not file a travel claim after completing his trip to San Diego, the Navy recouped the travel advance of \$1000 from his salary. The agency submitted a sworn declaration from the Deputy Director of Disbursing, Travel, and Payroll Support Division, Comptroller Directorate, Military Sealift Command. The Deputy Director states that her staff conducted a detailed search of all travel claims submitted to MSC from March 1, 2014, through August 20, 2015, and did not find a travel claim submitted by Mr. Lobelo for initial adjudication of his travel from Japan to California.

Discussion

The Board's authority to resolve claims of federal civilian employees for certain travel and relocation claims derives from chapter 57 of title 5 of the United States Code. Chapter 3702 of title 31 vests the authority to resolve these claims in the Administrator of General Services, who has delegated that function to the Civilian Board of Contract Appeals (CBCA). The CBCA has authority to review two types of employee claims, claims of reimbursement for expenses incurred while on official temporary duty travel and claims of reimbursement for expenses incurred in connection with relocation to a new duty station. 48 CFR pt. 6104 (2013). Before we can review any claim for entitlement to travel or relocation expenses, the claim must first be filed at claimant's own department or agency. 48 CFR 6104.401(c).

The agency has established that Mr. Lobelo did not file a claim for travel expenses to MSC as required by his orders. Until Mr. Lobelo files his claim with the agency, we have no agency action to evaluate.¹

¹ Mr. Lobelo is a member of a collective bargaining unit. Therefore, the agency contends that we do not possess the authority to decide this matter, because the Civil Service Reform Act, 5 U.S.C. § 7121 (2012), requires this to be "resolved under the grievance procedures in a CBA [collective bargaining agreement]," which are not "subject to review outside those procedures unless a specific exception is set forth in that agreement," *citing Daniel L. Kieffer*, CBCA 4705-TRAV, 15-1 BCA ¶ 36,050, at 176,066. We agree that generally, when claims are governed by grievance procedures established in a CBA, we do not have the authority to hear the claims. However, in this case, it is possible that we could settle the claim despite the fact that a collective bargaining agreement is in place. This is

Decision

For the foregoing reasons, the case is dismissed.

JERI KAYLENE SOMERS
Board Judge

because eligibility for repayment of claimant's airfare is governed by a statute, specifically, the Fly America Act, 49 U.S.C. § 40118 (2012). *See, e.g., Rafal Filipczyk*. CBCA 1122-TRAV, 08-2 BCA ¶ 33,886, reconsideration denied, 08-2 BCA ¶ 33,953. However, at this point, such a determination is premature because Mr. Lobelo has yet to file a claim with the agency.