



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 13, 2015

CBCA 4089-TRAV

In the Matter of DONALD C. BARNES

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James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

VERGILIO, Board Judge.

The claimant, who attended training within the local area of his official duty station, at a location less than fifty miles from his home, was not entitled to an allowance (per diem or actual expenses) and has not substantiated his travel costs (parking fee). Claimant's asserted medical conditions or special needs do not alter this result, as various accommodations for the alleged conditions would not include payment for lodging or other claimed expenses; claimant has identified no travel expenses incurred as an accommodation. The Board upholds the agency's determination of indebtedness.

The claimant, Donald C. Barnes, attended training for forty-four weeks in preparation for an overseas assignment in connection with his employment with the Department of Justice, Drug Enforcement Administration (agency). The claimant's residence was less than fifty miles from the training location. The claimant's duty station and training location were within four miles of each other, with the claimant's residence closer to the training location than the permanent duty station. As reflected on an authorization form, with approvals from various agency employees, the agency authorized the claimant to be reimbursed for 314 days of lodging (at \$150.75 per day), meals and incidental expenses (M&IE) (at \$53.25 per day), and other amounts (\$200) over the period of October 1, 2010, through August 10, 2011. This reflects per diem authorization. This form indicates that the claimant does not need special accommodations.

The claimant attended the training and for the first several months stayed at lodgings near to the training facility. For the period from September 13, 2010, through March 31, 2011, inclusive, the agency paid the claimant \$40,798.68, broken down as lodging at \$30,150, M&IE at \$10,636.68, and parking at \$12. In April 2011, the agency informed the claimant that because the claimant's residence was within fifty miles of the training facility he could not receive reimbursement for lodging or other expenses. The claimant ended his stay at the temporary lodging and returned to his residence and a daily commute for the remainder of the training. The agency demanded repayment of the \$40,798.68. The claimant sought a waiver of the debt. In a well-articulated, considered determination, the agency declined to waive the debt.

By statute, an employee, when traveling on official business away from the employee's designated post of duty, is entitled to particular payments from the Government. 5 U.S.C. § 5702(a)(1) (2012). Applicable implementing regulation specifies that an employee is eligible for an allowance (per diem or actual expense) *when the employee performs official travel away from the official duty station*, incurs per diem expenses while performing official travel, and is in a travel status for more than twelve hours. 41 CFR 301-11.1 (2010) (FTR 301-11.1). A per diem allowance is a daily payment for lodging and M&IE, and contrasts with a reimbursement for actual expenses. FTR 300-3.1 (per diem allowance defined). As detailed under FTR 301-2.2, an agency may pay only those expenses essential to the transaction of official business; this includes transportation expenses (FTR 301-10), per diem expenses (FTR 301-11), miscellaneous expenses (FTR 301-12), and travel expenses of employees with special needs (FTR 301-13).

An agency bulletin, CFO (Chief Financial Officer) 06-10, addresses reimbursement of expenses in the local travel area, which it defines as travel within a fifty mile radius from the employee's official duty station and/or fifty miles from the employee's residence. "When an employee travels to a location within the local travel area other than his or her permanent duty station, that employee may be reimbursed all travel costs incurred that day, minus the usual commuting expenses." As explained in case law, an employee is not reimbursed for a normal commute. *Kenneth R. Chaney*, CBCA 3220-TRAV, 13 BCA ¶ 35,304.

The resolution of this dispute is largely controlled by the cited statute and FTR 301-11.1, which specify that eligibility for per diem expenses (lodging and M&IE) is permitted only when an employee performs travel away from the official duty station, and the agency bulletin, which limits reimbursement of travel expenses within the local travel area of a permanent duty station. Here, the claimant's training was in the same locale as his official duty station and less than fifty miles from the claimant's residence. Because the claimant did not meet a threshold for eligibility, the authorization for per diem expenses was improper, and payment by the agency was contrary to statute and regulation. Additionally, the

claimant, who bears the burden of proof in this proceeding, Rule 401(c), 48 CFR 6104.401(c) (2014), has not shown that the parking expense was reimbursable pursuant to the agency's travel bulletin. The agency's demand for repayment fully is consistent with statute, regulation, the travel bulletin, as well as case law that specifies that an authorization does not confer rights on an employee that are contrary to statute and regulations. *James A. Kester*, CBCA 4411-RELO (Apr. 29, 2015); *Bradley P. Bugger*, CBCA 555-TRAV, 07-1 BCA ¶ 33,579.

As an aside regarding the initial authorization, a sworn declaration of an agency official involved states that the initial request was based on the claimant's representation that the distance from his home to the training site was a distance of greater than fifty miles. Although this distance is not a relevant calculation under statute or regulation, assertions of agency impropriety are not borne out by the record. The claimant has offered no credible support for the assertion that the distance from his residence to his duty station exceeded fifty miles. Searches on Google Maps and MapQuest identify routes of less than fifty miles between the claimant's residence and both his duty station and the training facility. Although Board review of a travel or relocation claim typically is limited to the record that the parties provide to the Board, Rule 401(c), it is appropriate to take judicial notice of maps and online resources which provide mileage calculations between given locations, particularly when the record contains no supporting documentation. *See Brisco v. Ercole*, 565 F.3d 80, 84 n.2 (2d Cir. 2009) (taking judicial notice of distance between two houses based upon Yahoo Local Maps); *Citizens for Peace in Space v. City of Colorado Springs*, 477 F.3d 1212, 1218 n.2 (10th Cir. 2007) (taking judicial notice of online distance calculation that relied on Google Maps).

The claimant has raised other grounds in an attempt to demonstrate entitlement to, or a basis for retaining, the payments at issue. The claimant requests a hearing; a hearing is not part of this process. 48 CFR pt. 6104; *James L. Thomas*, CBCA 890-RELO, 08-1 BCA ¶ 33,837. The claimant contends that the agency was aware of his medical condition, and authorized or could have authorized the per diem and other allowances as an accommodation for his conditions which limited his ability to sit for long periods of time (affecting his daily commute and participation in the training). He claims that the agency initially made a calculation of the distance between his residence and permanent duty station when it authorized reimbursement while aware of his medical conditions and associated limitations. Factually and legally the claimant has not identified a basis for relief.

Regarding the claimant's medical conditions, the travel authorization specified that the claimant needed no accommodations. The claimant, who received medical clearances prior to the training, identified no conditions that could affect his medical clearance. Even so, based upon his own submissions, the claimant did utilize accommodations during

training, as he stood for portions of the training, and took other actions to account for his conditions. However, the accommodations now sought by the claimant are not those contemplated under statute and regulation. The claimant was within the local area of his duty station. The claimant has identified no basis to receive lodgings and M&IE as an accommodation for his situation. The claimant references FTR 301-13.1 and -70.400, which discuss travel expenses and “reasonable accommodations,” not lodging and meals. The claimant has identified no travel expenses incurred as an accommodation. FTR 301-13.1 (an agency may provide reasonable accommodations to an employee with a special need by paying for additional travel expenses incurred). Further, the regulations make payment of travel expenses incurred for reasonable accommodations discretionary, not mandatory. Lodging and M&IE for an employee are not travel expenses within the ambit of those identified under FTR 301-13.3.

The claimant has identified no impropriety by the agency in demanding repayment of \$40,798.68.

JOSEPH A. VERGILIO
Board Judge