



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 18, 2016

CBCA 5081-TRAV

In the Matter of KYLE JAMES ZIENIN

Kyle James Zienin, Lexington Park, MD, Claimant.

Bonnie Petree, Travel Policy, Comptroller Group, Naval Air Warfare Center Aircraft Division, Department of the Navy, Patuxent River, MD, appearing for Department of the Navy.

BEARDSLEY, Board Judge.

Claimant, Kyle James Zienin, a civilian employee of the Naval Air Warfare Center Aircraft Division (NAWCAD) located at Patuxent, Maryland (Navy), seeks the Board's review of the Navy's denial of his request for reimbursement in the amount of \$2478.96 resulting from his use of a privately owned vehicle (POV) to travel back to Maryland from the Naval Air Station (NAS) in Point Mugu, California.

Factual Background

Claimant was given a temporary duty (TDY) assignment at the Navy's facility in Point Mugu, California, for a six-month period of October 15, 2013, to April 11, 2014. For that assignment, claimant's travel orders authorized him to travel to and from Point Mugu by commercial air and to rent a car while at the TDY location. On April 7, 2014, the period of claimant's TDY assignment was extended until September 30, 2014, and was changed to long term temporary duty (LTTDY). The authorization extending claimant's TDY did not mention the use of a POV to return to Maryland or alter the original modes of transportation that had been authorized (i.e., commercial air and rental car). Claimant took a commercial flight from Maryland to California in October 2013, and at that time rented a car which he used for the entire period of his LTTDY. Claimant was reimbursed for his costs, including \$11,885.60 for the rental car and gasoline and \$209.50 for his October 2013

flight. Claimant chose to return to Maryland in September 2014 by POV rather than by commercial air and left Point Mugu on September 27, 2014. Prior to embarking on his return trip, claimant alleges that he received verbal authorization from his authorizing official to travel by POV instead of commercial air. He claims entitlement to (1) \$1534.96 for POV mileage from Point Mugu, California, to Lexington Park, Maryland; (2) \$592 for lodging expenses from September 27 through October 2, 2014, and on October 7, 2014; and (3) \$352 for meals and incidental expenses (M&IE) from September 27 through October 2, 2014, and on October 7, 2014. Claimant is not claiming reimbursement for costs incurred from October 3 through October 6, 2014, because on those days, he was visiting family as part of his trip back to Maryland. Claimant took leave for those four days but did not take leave for the eight days of travel.

Claimant asserts that the reason for his decision to travel by POV instead of commercial air was that he had purchased a POV while in California in order to travel for personal matters on the weekends and days off and needed to transport the POV, personal items, and official documentation and equipment back to Maryland. The personal items included golf clubs, a mountain bicycle, a snowboard, snow boots and helmet, rollerblades, clothes, small kitchen appliances, binders, and paperwork. The official documentation and equipment included binders of test plans and flight notes, paperwork (such as aircraft procedures and deficiency reports), training manuals, a laptop, and a PCB Piezotronics 1g Handheld Shaker.

The Navy limited claimant's reimbursement for the trip back to Maryland to \$184.10, the cost of the return trip by the authorized mode of transportation, i.e., commercial airfare, plus the cost of tolls. The Navy calculated the \$184.10 reimbursement amount by subtracting the cost of the flight from Maryland to California in October 2013 (\$209.50) from the total cost of the round trip airfare (\$393.60). The cost of the tolls on October 8, 2014, was \$25.80.¹ The Navy determined that there was no advantage to the Navy for the claimant to purchase a POV because the claimant had a rental car available to him for the entirety of his LTTDY or to transport the official documentation and equipment by POV because the equipment and documentation could have been shipped for much less than the traveler's POV expense. In addition, the Navy inquired as to whether claimant should refund the salary paid to him during the travel days that claimant was not on leave, since a return flight could have been accomplished in one day.

¹ The payment of tolls by the Government is not in dispute. We, therefore, will not discuss the payment of tolls in this decision.

Discussion

In deciding this matter, we look to the Federal Travel Regulation (FTR), and because claimant is a civilian employee of the Department of Defense, we also look to the Joint Travel Regulations (JTR). Both the FTR and the JTR require that the agency select the method of transportation most advantageous to the Government and that POV use must be to the Government's advantage to be authorized. 41 CFR 301-10.4 (2014) (FTR 301-10.4); JTR C4700. The Navy determined that travel by commercial air was most advantageous to the Government in this case. At no time did the Navy determine that travel by POV would be to the "Government's advantage." Under the JTR, the Government's advantage determination is based on "(1) Mission requirements including transportation of baggage, tools, or equipment; (2) Availability of other transportation and the effect on productive time; . . . (6) The productive time lost for the additional travel time; (7) POC [privately owned conveyance, a term synonymous with POV] use [is] more efficient, economical, or results in a more expeditiously accomplished mission; . . . and/or (9) Common carrier use would be so time consuming that it would delay the mission." JTR C4775-B. The FTR is of like mind in that "travel must be by the most expeditious means of transportation practicable and commensurate with the nature and purpose of your duties. In addition, your agency must consider energy conservation, total cost to the Government (including costs of per diem, overtime, lost worktime, and actual transportation costs), total distance traveled, number of points visited and number of travelers." FTR 301-10.7. There is no indication that prior to claimant's return trip, the Navy considered these factors and determined that claimant's POV should be used for the return trip in lieu of commercial air transportation.

Claimant does assert that he received oral authorization from his authorizing official (AO) to travel by POV instead of commercial air in advance of his return trip. In urgent or unusual situations, oral travel orders issued in advance of travel can be considered equivalent to written orders. JTR C2210-B; JTR app. I, pt. 2(A)(1); FTR 301-2.1; *Gilda E. Best*, CBCA 4121-TRAV, 15-1 BCA ¶ 35,814 (2014). However, written confirmation of that order by the AO must follow promptly. JTR C2210. Here, no subsequent written travel order was executed by an authorizing official. Moreover, this situation was hardly urgent or unusual. To the contrary, the switch from commercial air transportation to POV appears to have been strictly a matter of claimant's personal preference.

Under these circumstances, the FTR states: "If you do not travel by the method of transportation required by regulation or authorized by your agency, any additional expenses you incur which exceed the cost of the authorized method of transportation will be borne by you." FTR 301-10.6. The FTR provides more specific guidance:

What will I be reimbursed if I am authorized to use common carrier

transportation or a rental vehicle and I use a POV instead?

You will be reimbursed on a mileage basis, plus per diem, not to exceed the total constructive cost of the authorized method of common carrier transportation plus per diem. Your agency must determine the constructive cost of transportation and per diem by common carrier under the rules in §301-10.310.

FTR 301-10.309. The FTR further explains:

If an employee elects to use a POV instead of an alternative authorized form of transportation, the agency must: (a) Limit reimbursement to the constructive cost of the authorized method of transportation, which is the sum of per diem and transportation expenses the employee would reasonably have incurred when traveling by the authorized method of transportation; and (b) Charge leave for any duty hours that are missed as a result of travel by POV.

FTR 301-70.105.

The JTR, in turn, provides:

If a traveler elects to use a POC instead of the authorized transportation mode (other than GOV [government owned vehicle]), reimbursement must be limited to the authorized transportation mode constructed cost, which is the sum of per diem and the transportation cost the GOV'T would have incurred if travel was performed by the authorized transportation mode. ***No other costs are added to the computation. Reimbursable expenses associated with driving a POC (e.g., parking, tolls) and incurred during travel between the PDS and TDY location are not authorized.***

JTR C4710-C; JTR app. O, T4030-A, - E.

Claimant chose to use a POV instead of returning to Maryland by the mode of transportation authorized. Claimant is, therefore, limited to recover only the per diem for a single day's air travel plus the transportation costs that would have been incurred had claimant used commercial air. The \$184.10 paid does not appear to represent the sum of these two costs. It is appropriate, therefore, that the Navy reconsider and recalculate the reimbursement due claimant. As to the Navy's inquiry regarding a refund of claimant's salary for the days of return travel for which he was not on leave, we lack authority to settle claims regarding a

Federal employee's compensation and leave. The Director of the Office of Personnel Management (OPM) has this authority. 31 U.S.C. § 3702(a)(2)-(3) (2012)); *Roy L. Edgar*, CBCA 1985-RELO, 11-1 BCA ¶ 34,702.

Decision

The Board remands this matter to the Navy in order for it to determine the reimbursement owed claimant in light of this decision.

ERICA S. BEARDSLEY
Board Judge