



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 5, 2016

CBCA 5289-RELO

In the Matter of TIMOTHY J. SODERLUND

Timothy J. Soderlund, APO Area Pacific, Claimant.

Vouionette D. Burns-Harris, Human Resources Specialist, Employee Relations, Department of the Air Force, Okinawa, Japan, appearing for Department of the Air Force.

BEARDSLEY, Board Judge.

Claimant, Timothy J. Soderlund, a civilian employee of the Department of the Air Force (Air Force), seeks the Board's review of the denial of his claim for the costs for his dependent to travel to Guam from Okinawa, Japan. The Air Force properly denied reimbursement for the travel, which was vacation travel and not early return travel.

Factual Background

Claimant requests that the Air Force pay the costs for his daughter's travel to Guam on the basis that she, as a dependent, was returning early from her father's permanent duty station (PDS). Claimant's daughter moved to Okinawa, Japan, with him as his dependent. Claimant reported for duty on June 21, 2008. On September 19, 2015, claimant's daughter left Okinawa for Tokyo, Japan, and then, on September 21, 2015, she traveled to Guam from Tokyo for vacation. She did not return to the United States as part of her travel. At the time she left Okinawa, claimant's daughter was not yet twenty-one years old and, therefore, still claimant's dependent. While in Guam, claimant's daughter married her fiancé and was no longer considered claimant's dependent. Claimant requests "a waiver to have my daughter's travel to Guam paid for as her ERD [early return of dependents] travel."

Discussion

Both the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR) apply in this matter because claimant is a civilian employee of the Air Force. The regulations in effect on the date of employment overseas govern this dispute. 41 CFR 302-2.3 (2008) (FTR 302-2.3); JTR C1050-C.2.b (2008). The claimant's daughter was a dependent and traveled under the claimant's 2008 relocation orders; therefore, the 2008 JTR regulations apply. The Air Force properly denied claimant's claim for reimbursement for his daughter's travel to Tokyo and Guam as early return travel for dependents. The Air Force denied claimant's request on the grounds that claimant failed to obtain approval prior to his daughter's departure, citing JTR 5582-B.2 (2015). This 2015 or similar 2008 section of the JTR is related to dependent travel in connection with a permanent change of station (PCS) order, though, and does not govern the resolution of this claim because the daughter was not traveling on a PCS order. The Air Force, however, no longer relies upon JTR C5582-B2 as a basis to disallow the claim, as it now seeks guidance on whether payment may occur under other provisions.

The dependent early return travel provision is applicable for return travel to the United States. JTR C5450-A (2008). Because claimant's daughter did not return to the United States, however, this provision does not permit payment. The Air Force points to FTR 302-3.228 and JTR 5602-A.1 (2015) as possible sources of authority. Both provisions, however, apply to a former dependent who returns to the claimant's actual residence. The 2008 version of FTR 302-3.228 states:

Is my dependent who turned 21 while overseas entitled to return travel to my place of actual residence at the expense of the Government?

Your dependent who turned 21 while overseas is entitled to return travel to your place of actual residence at the expense of the Government only if your dependent traveled overseas as your dependent under your TA [travel authorization], but not beyond the end of your current agreed tour of duty.

JTR C5450-D.1(2008) is substantially the same as the 2015 JTR provision referenced by the Air Force and states, "Reimbursement for return travel and transportation allowances to the actual residence (see Appendix A) is authorized: 1. Anywhere in the world for an employee's former spouse and/or former dependent who traveled to the employee's OCONUS [outside the continental United States] PDS as a dependent at Government expense." Neither the FTR provision nor the JTR provision permits reimbursement, because at the time claimant's daughter traveled to Tokyo and Guam, she was not a former dependent and she did not travel

to claimant's actual residence. JTR App. A 1-2 (2008) (defining actual residence); A 1-7 (2008) (defining dependent).

Early return travel may be authorized for compassionate or humanitarian reasons. FTR 302-3.511 states:

What must we consider when determining return travel for immediate family member(s) for compassionate reasons prior to completion of the service agreement?

You must determine that the public interest requires the return of the immediate family for compelling personal reasons of a humanitarian or compassionate nature, which may involve:

- (a) His/her physical or mental health;
- (b) The death of a member of the immediate family;
- (c) Obligations imposed by authority or circumstances over which the individual has no control;
- (d) The divorce or annulment of the employee's marriage; or
- (e) A dependent that traveled to post of duty on the employee's authorized TA and has now reached his/her 21st birthdate [sic].

See also JTR C5450-A.3. In addition to the fact that claimant's daughter did not return to the United States, there has been no evidence presented that any of these circumstances existed that would have allowed for authorization of claimant's daughter's travel to Tokyo or Guam as early return travel. The claimant, who bears the burden to establish entitlement, has not shown that the Air Force is obligated to pay for the vacation trip to Guam.

Claimant asked that the Board waive the statutory requirements of the JTR and FTR to allow the Air Force to pay for his daughter's travel to Guam as her early return of dependents travel, but he did not cite to any basis to support his request. "It is well established that, absent a specific provision in statute or regulation which might permit it under certain circumstances, neither an agency nor this Board has the authority to waive, modify, or depart from the Government's official travel regulations for the benefit of any federal employee who is subject to them." *Judith B. Gross*, GSBCA 16265-RELO, 04-1 BCA ¶ 32,543, at 160,976-77 (2003) (citing *David Mendoza*, GSBCA 15921-RELO, 03-1 BCA ¶ 32,082). The Board knows of no such statute or regulation to support claimant's request.

Decision

For the foregoing reasons, the Board denies Mr. Soderlund's claim for his daughter's travel costs to Guam.

ERICA S. BEARDSLEY
Board Judge