



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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December 6, 2016

CBCA 5327-TRAV

In the Matter of CHARLES R. WHEELER

Charles R. Wheeler, Wellington, FL, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**DRUMMOND**, Board Judge.

Charles R. Wheeler, a civilian employee of the Army Corps of Engineers, takes issue with the agency's debt collection claims associated with a temporary duty (TDY) assignment in 2015. The debt claims relate to TDY benefits paid to Mr. Wheeler after he received notice that his temporary duty (TDY) station would be his permanent duty station (PDS).

The agency in May 2015 sent Mr. Wheeler, a civil engineer, on TDY from his PDS in New Orleans, Louisiana, to West Palm Beach, Florida, to work at the Herbert Hoover Dike Project Office. Mr. Wheeler's travel orders authorized reimbursement for TDY expenses and per diem at a flat rate of \$150.25 per day. While on TDY, Mr. Wheeler requested and received reimbursement for expenses and per diem through September 28, 2015.<sup>1</sup>

The agency determined through an audit that Mr. Wheeler had accepted a permanent change of station (PCS) to the Herbert Hoover Dike Project Office on July 30, 2015, with an effective date of September 11, 2015. The agency reconstructed his return date to July 31, 2015, and determined that based on the Defense Department's Joint Travel Regulations

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<sup>1</sup> Mr. Wheeler represents that he mistakenly requested per diem to September 28, 2015. Mr. Wheeler states that he meant to request per diem to August 28, 2015, and agrees that he owes the agency for the overpayments caused by his mistake.

(JTR) 4805-B.1, he was overpaid \$2501.88 for the period August 1 through 14, 2015, and \$7794.59 for the period August 15 through September 28, 2015. JTR 4805 states in pertinent part:

B. Per Diem Allowance

1. Payment of per diem stops on (i.e., is not paid on or after) the date the employee receives notice that the TDY station becomes the PDS.

Mr. Wheeler does not argue that the agency misapplied JTR 4805-B.1, only that he was unaware of this regulation. Unfortunately, Mr. Wheeler's purported lack of knowledge of the applicable regulation cannot relieve him from his debt obligations. See *Debra K. Armstrong*, CBCA 3712-RELO, 14-1 BCA ¶ 35,676 (citing *Gary Wayne Littlefield*, CBCA 3826-RELO, 14-1 BCA ¶ 35,653).

Mr. Wheeler concedes that he owes the agency for the period August 29 to September 28, 2015, but instead argues the debt amount should be adjusted since he continued working at his temporary duty site in West Palm Beach, Florida, to August 28, 2015, based on the exception at JTR 4805-B.2, which states:

Per diem is paid if the employee performs a TDY at the new PDS before the transfer effective date, and the TDY is terminated by a return to the old PDS, at which the employee performs substantial duty. For example, notice is received on 1 September 2008, TDY is 4-6 September 2008, and the transfer effective date is 30 September 2008 (B-214966, 27 December 1984).

The agency argues that JTR 4805-B.2 has no application in this case. The agency notes that although Mr. Wheeler returned to his old PDS on August 28, 2015, he went on leave status from August 31 through September 10, 2015, before reporting to his new PDS. The agency maintains that due to Mr. Wheeler's leave status, he was unable to perform any substantial duty at his old duty station. Mr. Wheeler has not argued that he performed any substantial duty upon his return.

In this matter the agency acted correctly in applying the JTR and in determining the debt. It is a general rule that payment of per diem is authorized only to employees on official travel away from their PDS. 5 U.S.C. § 5702(a) (2012). If, as here, an employee is transferred to a place where he is already on temporary duty, the payment of per diem stops on (i.e., is not paid on or after) the date the employee receives notice of the intended transfer. See JTR 4805-B.1; 23 Comp. Gen. 342 (1943). Mr. Wheeler does not dispute that he received notice of the transfer effective July 30, 2015. We agree with the agency on its

payments based upon an end of TDY on July 31, 2015. We further agree with the agency that Mr. Wheeler did not perform any substantial duty at his old PDS upon his return on August 28, 2015, and therefore JTR 4805-B.2 was not applicable.

Decision

The agency correctly determined that it overpaid Mr. Wheeler for the amounts stated above. The Board denies the claim.

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JEROME M. DRUMMOND  
Board Judge