



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 5, 2016

CBCA 4814-TRAV

In the Matter of INEZ J. KELLY

Inez J. Kelly, Orlando, FL, Claimant.

Todd A. Barreca, Accounting Department, Naval Air Warfare Center Training Systems Division, Department of the Navy, Orlando, FL, appearing for Department of the Navy.

HYATT, Board Judge.

After conducting a travel audit, the Naval Air Warfare Center Training Systems Division (Navy), determined that claimant, Inez J. Kelly, owed debts in the amounts of \$1235.40 and \$2626.40, in connection with temporary duty (TDY) travel. Ms. Kelly has requested that the Board review and reverse the audit findings with respect to her travel expenses. For the reasons stated, we grant Ms. Kelly's claim. The Navy has no basis to require that Ms. Kelly repay these amounts.

Background

Claimant was issued Temporary Change of Station (TCS) orders for a detail from her permanent duty station (PDS) at the Naval Air Warfare Center Training Systems Division in Orlando, Florida, to perform a rotational assignment as a technology fellow with the Chief of Naval Operations Strategic Studies Group (SSG) in Newport, Rhode Island. The initial assignment was for a two-year period, beginning in August 2012. The detail was extended for a third year, through September 2015, at the request of SSG. Subsequently, the Navy realized that the TCS authorization, which is limited by regulation to thirty months, would expire in February 2015, requiring that Ms. Kelly either return to Orlando or be permanently reassigned to Newport.

In December 2014, Ms. Kelly was notified of the impending expiration of her TCS assignment. Ms. Kelly was also asked to complete and return a questionnaire for the purpose of estimating the cost of her return to Orlando. In the interim, Ms. Kelly's TCS supervisors in Rhode Island, concerned that her participation was still needed by the organization to complete the assignment to which she had been detailed, sought to obtain permission to extend her temporary assignment or, alternatively, to obtain authorization for a permanent change of station.

In an email message dated January 29, 2015, the Navy's Office of Civilian Human Resources advised that no exceptions could be granted for an extension of TCS for Ms. Kelly. An official letter to this effect was issued on February 10, 2015, acknowledging that travel orders should be prepared to implement claimant's return to Orlando. No such orders were issued, however, until February 17, 2015. Meanwhile, Ms. Kelly and her supervisors continued to explore the possibility of a permanent transfer to Newport. Ultimately, Ms. Kelly returned to Orlando, but continued to be assigned to work with SSG from there.

After February 12, 2015, and prior to her return to Orlando, Ms. Kelly traveled several times on temporary duty orders in furtherance of her assignment to SSG. One trip, from February 17 through February 21, 2015, was from Newport to Tampa, Florida. The second trip was from Newport to Arlington, Virginia. These trips had been arranged prior to the date her TCS was scheduled to expire. The TDY travel originated from and returned to Newport, the TCS location.

After the travel had been performed, the Navy audited Ms. Kelly's vouchers for three trips she took in connection with her work for SSG. The auditors compared the cost of the trips as performed to and from Newport with the constructive cost of the same travel had it originated from and returned to Orlando, which the auditors deemed to be Ms. Kelly's PDS after February 12. The constructive cost of two of the trips, if performed from Orlando instead of Newport, was determined to be less than the cost of performing the travel from and to Newport. The Navy consequently established a debt in the amount of the constructive overage.

Discussion

By statute, the Government is required to reimburse employees for the actual and necessary costs incurred to travel on official business. 5 U.S.C. § 5702 (2012). Under the Federal Travel Regulation (FTR) agencies are to limit payment of travel costs to those which are necessary to accomplish the mission in the most economical and efficient manner and in accordance with the rules stated throughout the FTR. 41 CFR 301-2.2, -70.1 (2015). In keeping with this policy, the FTR specifies that an employee performing a TDY assignment

must “travel to [his or her] destination by the usually traveled route unless [the] agency authorizes or approves a different route as officially necessary.” 41 CFR 301-10.7. The usually traveled route contemplates round trip travel originating from the employee’s official duty station. *Robert O. Jacob*, CBCA 471-TRAV, 07-1 BCA ¶ 33,530.

Here, the Navy takes the position that Ms. Kelly was required to return to her PDS in Orlando upon the expiration of her formal TCS assignment on February 12, 2015, and that any travel scheduled after that date was required to have been performed from that location. The amounts the agency has assessed as a debt represent the difference in cost of travel from Orlando to each TDY location and return, versus the cost of travel performed to the TDY location from Newport, Ms. Kelly’s TCS location.

Although the agency’s concerns about the circumstances that arose here are understandable, the proposed resolution by the Navy is neither required nor permitted under the travel regulations. The confusion that arose with respect to extending Ms. Kelly’s detail with SSG either as a TCS assignment or permanent reassignment, versus returning claimant to her official duty station, had not been fully resolved before the expiration of the TCS term. The written ruling on the TCS assignment was issued to Ms. Kelly a scant two days before the expiration of that assignment. The Navy also put Ms. Kelly in the untenable position of resolving the competing requests of her supervisors at the TCS location and the Office of Human Resources. In addition, although the Human Resources group instructed her to return to her PDS in Orlando, the travel authorization to implement that return had not actually been issued, effectively leaving Ms. Kelly in limbo.

The requisite travel authorization for Ms. Kelly’s return to Orlando was not issued until February 19, 2015. It is axiomatic that relocation travel should not be performed until after the issuance of formal authorization. In addition, both statute and regulation contemplate that the employee be given reasonable time, generally at least thirty days, to prepare for the move. It was not reasonable to expect Ms. Kelly to return to Orlando immediately at the expiration of the authorized TCS in the absence of such orders.

It is also a longstanding principle that competent travel orders generally may not be modified to expand or reduce an employee’s reimbursable expenses after travel has been performed. *Sheri L. Ellis-Smith*, CBCA 4022-RELO, 15-1 BCA ¶ 36,057, at 176,078. As the Board has observed:

Legal rights and liabilities with regard to travel expenses vest when the travel is performed, and valid travel orders may not be revoked or modified retroactively so as to increase or decrease the rights that have become fixed after the travel has been performed. *Dana Riser*, GSBCA 14017-RELO, 98-1

BCA ¶ 29,417 (1997). Travel orders may be amended or revoked to correct an error on the face of the orders or if the orders clearly are in conflict with a law, regulation, or agency instruction.

Jeffrey E. Koontz, CBCA 3251-TRAV, 13 BCA ¶ 35,318, at 173,372; *accord, e.g., Renee Cobb*, CBCA 5020-TRAV, 16-1 BCA ¶ 36,240; *Tomila K. Hearon*, CBCA 3995-TRAV, 15-1 BCA ¶ 35,904 (2014); *Mustak Y. Keval*, CBCA 3349-RELO, 14-1 BCA ¶ 35,490; *Thelma H. Harris*, GSBCA 16303-RELO, 04-1 BCA ¶ 32,540 (2003); *Jeffrey D. Vance*, GSBCA 16016-RELO, 03-2 BCA ¶ 32,317.

The TDY travel orders were valid on their face and authorized Ms. Kelly to leave from and return to Newport, Rhode Island. The orders were not modified or rescinded prior to travel being performed. Travel orders establishing an appropriate report date for Ms. Kelly's return to Orlando had not been issued. As such, the TDY orders were valid as issued. Ms. Kelly was properly reimbursed for the expenses she incurred under the orders.

The Navy could have taken more definitive action to resolve this situation such that Ms. Kelly would have been returned to Orlando earlier, but instead effectively left claimant to resolve conflicting objectives of the supervisory chain on her own. The solution in this case is not to penalize the claimant by invoking a rule that is intended to ensure the Government does not pay more than it should when an employee combines personal and official travel, but rather to ensure that management directives are coordinated in this area so that employees have a resolution of their status in advance of expiring deadlines under the regulations.

Decision

The claim is granted. Ms. Kelly was entitled to be reimbursed for her actual travel expenses incurred pursuant to the travel orders as issued and performed. She is not required to pay the debt assessed by the agency.

CATHERINE B. HYATT
Board Judge