



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 20, 2016

CBCA 5151-RELO

In the Matter of PATRICK L. KELLER

Patrick L. Keller, North Pole, AK, Claimant.

Thomas Spahr, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

KULLBERG, Board Judge.

Claimant, Mr. Patrick L. Keller, seeks reimbursement for expenses that he incurred driving his personally owned vehicle (POV) from Albuquerque, New Mexico, to the vehicle processing center (VPC) in Los Angeles, California. Mr. Keller's agency, the Department of Defense (DoD), reimbursed him for mileage to the VPC nearest to his home, which was in Dallas, Texas, and his return travel, but denied reimbursement for lodging and return airfare for his spouse. For the reasons stated below, the Board denies the claim.

Background

On June 30, 2015, DoD issued permanent change of station (PCS) orders that transferred Mr. Keller from his former duty station in Albuquerque to his present duty station at Fort Wainwright, Alaska, with a reporting date of August 9, 2015. The PCS orders provided for the shipment of Mr. Keller's POV. Mr. Keller decided to drive his POV to the VPC in Los Angeles, and his spouse accompanied him to assist with driving part of the distance. On July 29, 2015, Mr. Keller and his spouse left Albuquerque and drove for two

days to Los Angeles. After leaving his car at the VPC, they took a taxi to the airport and returned to Albuquerque on July 31.

Mr. Keller subsequently submitted his claim for travel between Albuquerque and Los Angeles. His claim included two purchases of gasoline (\$5.00 and \$67.16), lodging for one night (\$45.65), taxi fare from the VPC to the airport (\$32.65), and return airfare for himself and his spouse (\$436). DoD's reimbursement totaled \$401.45. Instead of reimbursement for gasoline purchases, DoD reimbursed Mr. Keller for mileage from Albuquerque to the nearest VPC, which was in Dallas. Also, DoD reimbursed Mr. Keller for taxi fare to the airport and his return airfare, but reimbursement for lodging and his spouse's return airfare was denied.

In his letter to DoD, which was dated September 10, 2015, Mr. Keller requested reconsideration of his claim because he had not been advised that the nearest VPC was in Dallas. Additionally, Mr. Keller explained that his spouse accompanied him on the trip to the VPC in Los Angeles because of health concerns that precluded him from driving alone. DoD forwarded Mr. Keller's claim to the Board, and Mr. Keller filed his response.

Discussion

The issue presented in this matter is whether Mr. Keller has presented valid grounds for reimbursement of those travel expenses that DoD denied. Statute provides for the shipment at government expense of an employee's POV when that employee transfers "to, from, and between the continental United States and a post of duty outside the continental United States." 5 U.S.C. § 5727(b) (2012). The Federal Travel Regulation (FTR), which applies to Mr. Keller, provides the following:

What may I do if there is no port or terminal at the point of origin and/or destination?

If there is no port or terminal at the point of origin and/or destination, your agency will pay the entire cost of transporting the POV from your point of origin to your destination. If you prefer, however, you may choose to drive your POV from your point of origin at time of assignment to the nearest embarkation port or terminal, and/or from the debarkation port or terminal nearest your destination to your post of duty at any time. If you choose to drive, you will be reimbursed your one-way mileage cost, at the rate specified in part 301-4 of this title, for driving the POV from your authorized origin to deliver it to the port of embarkation, or from the port of debarkation to the authorized destination. For the segment of travel from the port of embarkation back to your authorized origin after delivering the POV to the port or from

your authorized destination to the port of debarkation to pick up the POV, you will be reimbursed your one-way transportation cost. The total cost of round-trip travel, to deliver the POV to the port at the origin or to pick up the POV at the port at your destination, may not exceed the cost of transporting the POV to or from the port involved. You may not be reimbursed a per diem allowance for round-trip travel to and from the port involved.

41 CFR 302-9.104 (2015) (FTR 302-9.104). The Joint Travel Regulations (JTR), which also apply in this case, similarly do not allow reimbursement of per diem when an employee drives his or her POV to a VPC. JTR 5726-B.1. Per diem includes lodging and other expenses incurred by an employee while on official travel. FTR 301-11.1, -11.5. DoD properly limited Mr. Keller's reimbursement to mileage between his former home in Albuquerque and the closest VPC, which was in Dallas, and the cost of his return transportation. There is no provision under those regulations for reimbursing the travel of his spouse or the reimbursement of per diem.

Mr. Keller contends that it was necessary for his wife to accompany him because of health-related issues that limited the distance that he could drive. It is well established that “[t]he FTR is a ‘legislative rule’—a regulation issued under express authority from Congress, for the purpose of affecting individual rights and obligations by filling gaps left by a statute.” *Frank J. Salber*, GSBCA 16836-RELO, 06-2 BCA ¶ 33,330, at 165,286. As discussed above, the FTR provides that Mr. Keller is only entitled to reimbursement for mileage to the VPC in Dallas and his return travel. He is not entitled to reimbursement for his spouse's travel or per diem. Although Mr. Keller may have believed that his spouse needed to accompany him to assist with driving, he is not entitled to additional reimbursement because “this Board does not have 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.’” *Myles England*, CBCA 1244-RELO, 09-1 BCA ¶ 34,045, at 168,382 (2008) (quoting *Charles T. Oliver*, GSBCA 16346-RELO, 04-1 BCA ¶ 32,614, at 161,405).

Additionally, Mr. Keller contends that he was not informed that the VPC closest to Albuquerque was in Dallas, and he acted upon the advice of the persons who were responsible for arranging his transfer when he decided to drive his POV to Los Angeles. It has been held that “incorrect advice provided by government officials cannot create or enlarge entitlements that are not authorized by statute or regulation.” *Linda Cashman*, CBCA 3495-RELO, 14-1 BCA ¶ 35,535, at 174,136. While it is unfortunate that Mr. Keller may have relied upon the incorrect advice of other government employees and believed that he would be reimbursed for all of the expenses he incurred, the Board “has no authority to reimburse an employee for an expense contrary to statute or regulation.” *Delbert C.*

Steorts, II, CBCA 2468-RELO, 12-1 BCA ¶ 34,890, at 171,590 (2011) (citing *Michael Vincelli*, CBCA 1828-RELO, 10-1 BCA ¶ 34,461, at 170,020).

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge