



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 14, 2016

CBCA 4951-TRAV

In the Matter of BRIAN D. ZBYDNIEWSKI

Brian D. Zbydniewski, Spangdahlem Air Base, Germany, Claimant.

Eric I. Cuebas, Director, Air Force Financial Services, Office of the Assistant Secretary, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

SOMERS, Board Judge.

Brian D. Zbydniewski, a civilian employee with the Department of the Air Force stationed at Spangdahlem Air Base, Germany, asks the Board to review his agency's decision not to reimburse him for an airline ticket and associated expenses he incurred in October 2014, when he returned to the United States on emergency visitation travel (EVT) orders. For the reasons set forth below, we deny Mr. Zbydniewski's claim.

Background

In October 2014, Mr. Zbydniewski received news that a close family member had entered hospice care in Cleveland, Ohio. Mr. Zbydniewski immediately contacted a travel agency, seeking quotes for the cost of airline tickets for him and his spouse to travel from Germany to Ohio. The travel agency quoted ticket prices in the range of approximately \$400 - \$500 per person. However, before he purchased the tickets, the American Red Cross contacted Mr. Zbydniewski with a case number. Once Mr. Zbydniewski received the case number, his supervisor explained to Mr. Zbydniewski that he and his spouse could travel on EVT orders at government expense. The unit issued an official travel order to Mr. Zbydniewski on October 24, 2014.

With the travel order in hand, Mr. Zbydniewski obtained tickets from SATO [the travel office], as instructed. The tickets cost \$1468 per person, all-inclusive. After returning from Ohio, Mr. Zbydniewski submitted his travel claim for both sets of tickets. The agency reimbursed Mr. Zbydniewski for his ticket, but denied his claim for his spouse's ticket. While recognizing that Mr. Zbydniewski had received incorrect information about his entitlement to reimbursement for EVT travel, the agency concluded that, under the Joint Travel Regulations (JTR) 7020, Mr. Zbydniewski could not be reimbursed for the cost of the second ticket. A second opinion provided by the Defense Finance and Accounting Service reached the same conclusion.

Discussion

JTR 7020 governs EVT for civilian employees. JTR 7020-B provides as follows:

1. Purpose. EVT allows an eligible employee assigned at/family member (of an employee) accompanying the employee at a foreign PDS [permanent duty station] to travel at Gov't [government] expense to the CONUS [continental United States], non-foreign OCONUS [outside of the continental United States] area, or another location in certain family emergency situations.
2. Allowance Discretion. EVT is not a discretionary allowance, except that the AO [authorizing official] must confirm the need for EVT and has discretion with regard to authorizing/approving an additional trip and transportation for an additional family member(s).

JTR 7020-E.1 provides that “[o]rdinarily, only one family member is authorized travel at Gov't expense. In exceptional circumstances, the AO may authorize/approve the travel of additional family members.” JTR 7020-E.2 states:

Exceptions: Additional family members must travel due to:

- a. A critical injury to a dependent child attending school away from the PDS,
- b. The death of the employee or immediate family member at the PDS and the remains are being returned for interment in CONUS or in a non-foreign OCONUS area,
- c. A nursing child needs to accompany the mother, or

d. Preschool children to accompany a single parent.

In addition, JTR 7020-C cites as its legal authority 10 U.S.C. § 1599b¹ and 22 U.S.C. § 4081², and orders that “allowances must be similar to EVT allowances in 3 FAM [Foreign Affairs Manual] 3740 of the State Department regulations.” Volume 3 of the FAM, section 3744(d) states that, “[o]rdinarily, only one member of a family (the person directly related to the ill, dying, or deceased individual) may travel at U.S. Government expense.” The clause identifies four exceptions,³ none of which apply to this situation. *See Rebecca Miller*, GSBGA 16782-TRAV, 06-1 BCA ¶ 33,258 (although employee entitled to EVT, Board denied claim for EVT for her nine-year-old son).

¹ This statute, governing employees abroad, states that “[t]he Secretary of Defense may provide civilian employees, and members of their families, abroad with benefits that are comparable to certain benefits that are provided by the Secretary of State to members of the Foreign Service and their families abroad,” including “travel expenses and related expenses.” 10 U.S.C. § 1599b(a), (b).

² “Section 901 of the Foreign Service Act of 1980, which is codified at 22 U.S.C. § 4081 (2012), ‘grants the Secretary of State the authority to pay the travel-related expenses of members of the Foreign Service and their families.’” *Brian D. Crawford*, CBCA 4880-RELO, 15-1 BCA ¶ 36,162, at 176,472 (quoting *Raymond Daniel Toma, Jr.*, CBCA 1499-RELO, 09-2 BCA ¶ 34,152, at 168,822).

³ The exceptions are:

- (1) If an employee or eligible family member resident at post dies, the remaining eligible family members resident at post may travel to the funeral or accompany the deceased to the place of interment in the United States or abroad;
- (2) A nursing child may accompany the mother, or pre-school children may accompany a single parent;
- (3) In EVT cases involving children who require exceptional medical attention and where both parents reside at post, both parents may be authorized to travel under the EVT authority. The limitations prescribed for that particular EVT apply to each traveler;
- (4) For unaccompanied post EVT, the number of travelers may not exceed three unless the number of dependent children, as defined in 14 FAM 511.3, plus the spouse or domestic partner exceeds this limitation. The Department of State’s Office of Casualty Assistance will make a decision for additional travelers on a case-by-case basis.

Mr. Zbydniowski asserts that he was misled by his supervisor's statements into believing that he would be reimbursed for EVT for both himself and his spouse. As we have noted previously, "an agency may not pay monies in violation of statute and regulation, even though the travel authorization purported to create the entitlement and an employee relied upon the authorization to his detriment." *Thomas A. Gilbert*, CBCA 2214-RELO, 11-2 BCA ¶ 34,786, at 171,206 (quoting *Joseph E. Copple*, GSBCA 16849-RELO, 06-2 BCA ¶ 33,332, at 165,290); see *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947). Even where an employee relies to his detriment upon the erroneous advice of agency officials, we cannot order payment if payment would contravene the requirements of a statute or regulation. *Milton Brown*, CBCA 4998-RELO, slip op. at 9 (Dec. 28, 2015) (citing *Benjamin A. Knott*, CBCA 4579-RELO, 15-1 BCA ¶ 36,019, at 175,922; *James A. Kester*, CBCA 4411-RELO, 15-1 BCA ¶ 35,966, at 175,729-30; *Bruce Hidaka-Gordon*, GSBCA 16811-RELO, 06-1 BCA ¶ 33,255, at 164,834).

Decision

For the foregoing reasons, we must deny Mr. Zbydniowski's claim.

JERI KAYLENE SOMERS
Board Judge