



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 11, 2016

CBCA 4739-TRAV

In the Matter of AMY JIRSA-SMITH

Amy Jirsa-Smith, Bismarck, ND, Claimant.

Dianna Herbert, Financial Manager, Animal and Plant Health Inspection Service, Department of Agriculture, Riverdale, MD, appearing for Department of Agriculture.

SULLIVAN, Board Judge.

Claimant, Amy Jirsa-Smith, seeks reconsideration of the Board's decision on her claim for travel reimbursement. *Amy Jirsa-Smith*, CBCA 4739-TRAV, 15-1 BCA ¶ 36,123. Because Ms. Jirsa-Smith's request is untimely and does not present any new evidence regarding the key issue in the Board's decision, the Board denies the request for reconsideration.

The Board issued its decision on October 2, 2015. On November 6, 2015, Ms. Jirsa-Smith requested a thirty-day enlargement of the date by which to seek reconsideration because she still had not received a response to a Freedom of Information Act (FOIA) request that she had submitted to the agency regarding her claim. The Board granted Ms. Jirsa-Smith's request and enlarged the date for filing a reconsideration request to December 7, 2015.

The Board received Ms. Jirsa-Smith's reconsideration request on December 21, 2015. As the basis for reconsideration, Ms. Jirsa-Smith argues that she should have been reimbursed for the cost of travel using her personally-owned vehicle (POV) up to the cost of travel by a common carrier, citing 41 CFR 301-10.310 (2014). To her reconsideration

request, Ms. Jirsa-Smith attached a series of email messages that she received in response to her FOIA request that discuss the application of this regulation.

Rule 407 of the Rules of the Civilian Board of Contract Appeals permits either the claimant or the agency to seek reconsideration of the Board's decision. 48 CFR 6104.407 (2014). Reconsideration requests must be received by the Board thirty days after the date of the decision and "should state the reasons why the Board should consider the request." *Id.* "Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration." *Id.*

Ms. Jirsa-Smith acknowledges that her reconsideration request is untimely, but explains that she just received the requested documents. Ms. Jirsa-Smith sought and obtained one thirty-day enlargement request. She could have sought additional time in that original request or filed a second request. The timing of the agency's response to her FOIA request does not excuse the untimeliness of her reconsideration request.

In her request for reconsideration, Ms. Jirsa-Smith argues points that she already made or could have made in the original proceedings. None of her arguments or new evidence address the key issue in the Board's original decision. *Donald C. Barnes*, CBCA 4089-TRAV, 15-1 BCA ¶36,149 (reconsideration denied when claimant did not dispute fact material to decision). In her original claim, Ms. Jirsa-Smith sought the difference between reimbursement at the lower rate for a Government-owned vehicle (GOV) and the higher rate for a POV, arguing that she could not have used her GOV because the trip exceeded the agency's ten-hour-per-day travel limit. The Board denied Ms. Jirsa-Smith's claim upon finding that it was Ms. Jirsa-Smith's choice to combine personal travel with official travel that made her GOV unavailable for her trip. 41 CFR 301-10.201 (use of GOV limited to travel for official purposes). Pursuant to statute, because Ms. Jirsa-Smith chose to use her POV although she had a GOV available to her, she could only be reimbursed the cost of travel by GOV. 5 U.S.C. § 5704(c); 41 CFR 301-10.310.

Ms. Jirsa-Smith argues on reconsideration that she should have been reimbursed the cost of her travel by POV up to the amount of the cost of travel by common carrier. Ms. Jirsa-Smith is correct that the Federal Travel Regulation provides for reimbursement up to the limit of the cost of the common carrier if an employee chooses to drive a POV. But, statute and regulation further provide that, if a GOV is available but an employee chooses to drive a POV, reimbursement is limited to the GOV rate. Ms. Jirsa-Smith has not offered any new evidence or argument regarding the Board's finding that she planned to combine personal travel with her official travel and, therefore, chose to drive her POV, although she has a GOV available to her for her use.

Ms. Jirsa-Smith further argues that travel by GOV would not have been the most advantageous to the Government because it would have required a total of four days of travel for a three-day meeting to comply with the agency's ten-hours-per-day travel limit for GOV travel. This argument also does not address the central issue in Ms. Jirsa-Smith's claim – that it was her choice to combine personal and official travel that required the use of her POV.

Finally, Ms. Jirsa-Smith informs the Board that she has been authorized to travel for another meeting and the agency has authorized her travel by common carrier. She attached her travel authorization to her reconsideration request. This information does not alter the Board's analysis of her claim. The record in the case contained an email message from agency personnel indicating that Ms. Jirsa-Smith could travel by common carrier for the travel that was the subject of her claim. Ms. Jirsa-Smith declined this offer, choosing to travel using her POV so that she could combine personal travel with official travel. With this choice, the requirements of statute and regulation for reimbursement at the GOV-rate apply and Ms. Jirsa-Smith's reimbursement is limited to that rate.

Decision

The request for reconsideration is denied.

MARIAN E. SULLIVAN
Board Judge