



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 5, 2016

CBCA 5231-TRAV

In the Matter of D'ANN SHERWOOD

D'Ann Sherwood, Chievres, Belgium, Claimant.

Grace Noble, Chief, Civilian Personnel Division, 5th Signal Command, Department of the Army, APO Area Europe, appearing for Department of the Army.

SULLIVAN, Board Judge.

Claimant, D'Ann Sherwood, appeals the denial of her reimbursement request for emergency visitation travel (EVT) undertaken upon the death of her mother-in-law. The agency, the Department of the Army, denied Ms. Sherwood's request because applicable travel regulations only permit the Government to reimburse the cost of travel for one family member and the agency had reimbursed the costs of Ms. Sherwood's spouse to travel. Because the agency's determination comports with applicable regulation, we deny Ms. Sherwood's claim.

Background

Ms. Sherwood is a civilian employee of the Army, assigned to the 39th Signal Battalion in Belgium. In December 2015, Ms. Sherwood's spouse traveled back to the United States to visit her mother, who was seriously ill. Her mother passed away during the visit and Ms. Sherwood traveled to the United States to attend the funeral. Both Ms. Sherwood and her spouse returned to Belgium in January 2016.

Upon their return, Ms. Sherwood sought reimbursement of the costs of both of their trips. It appears that the agency reimbursed Ms. Sherwood for the costs of her spouse's travel, but denied reimbursement for Ms. Sherwood's travel. The agency denied reimbursement for Ms. Sherwood's travel because applicable regulations authorize the reimbursement of EVT travel costs to just one family member, either the employee or another family member.

Discussion

As a civilian employee of the Department of Defense, Ms. Sherwood is subject to the authority and limitations set forth in the Joint Travel Regulations (JTR). Pursuant to the JTR, employees stationed abroad may be reimbursed the costs of EVT to visit seriously ill family members or attend funerals:

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 expense to the CONUS [continental United States], non-foreign OCONUS [outside the continental United States] area, or another location in certain family emergency situations.

JTR 7020-B(1). EVT is authorized when a member of the immediate family of the employee, the employee's spouse, or the domestic partner of the employee is "seriously ill or injured and faces imminent death," or has died. JTR 7020-B(5). However, the regulations place limits on the number of trips for which the Government will pay:

E. Limit on Number of Travelers

1. General. Ordinarily, the employee *or* one eligible family member (*not both*) is authorized travel at Gov't expense. In exceptional circumstances, the AO [authorizing official] may authorize/approve the travel of additional family members.
2. 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 an 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.

JTR 7020; *Brian D. Zbydniowski*, CBCA 4951-TRAV, 16-1 BCA ¶ 36,223.

The legal authority for this regulation is found at 10 U.S.C. § 1599b (2012), which provides that the Secretary of Defense may provide benefits for travel and related expenses to civilian employees comparable to those benefits provided by the Secretary of State for members of the Foreign Service, and 22 U.S.C. § 4081, which provides that the Secretary of State will provide benefits for travel and related expenses for members of the Foreign Service. JTR 7020-C. The JTR further provides that the allowances provided must be similar to those provided pursuant to the State Department regulations found at 3 FAM (Foreign Affairs Manual) 3740. *Id.*

State Department regulations regarding EVT benefits state, “Ordinarily, only one member of a family (the person directly related to the ill, dying or deceased individual) may travel at U.S. Government expense.” 3 FAM 3744(d). State Department regulations further provide that “EVT benefits are not transferable. Only the employee or the spouse or the domestic partner . . . directly related to the seriously ill, injured, or deceased family member may be authorized EVT.” 3 FAM 3744(e).

Finally, the JTR also provides that, if an employee, spouse, or domestic partner returns from EVT and the family member subsequently dies, the command or agency may authorize a second trip for the funeral:

O. EVT for Medical Reasons

1. Limit on Number of Trips. The employee/spouse/domestic partner is limited to one round trip for each serious illness or injury of each immediate family member. If the traveler returns to the employee’s PDS from an EVT visit and the ill/injured immediate family member subsequently dies, the AO may authorize/approve a second trip under par. 7020-B5b.

JTR 7020.

It is this final provision upon which Ms. Sherwood bases her claim. As Ms. Sherwood explains, if her spouse had returned from the United States and then traveled again for her mother’s funeral, her spouse would have been permitted to undertake two trips, the costs of which would have been paid pursuant to this regulation. Since the regulations would have permitted two different trips to be reimbursed, Ms. Sherwood argues that she should be allowed to take the place of her spouse and be reimbursed for the travel to attend the funeral.

The regulation cannot be read in the manner in which Ms. Sherwood advocates. With her claim, Ms. Sherwood seeks the travel benefits that her spouse might have received if she

had returned to the PDS before her mother passed away. Although the JTR does not contain the same provision regarding EVT benefits not being transferable, the JTR requires that agencies of the Department of Defense provide the same benefits as Foreign Service employees receive. Because State Department regulations would not have allowed Ms. Sherwood to claim her spouse's EVT benefits, the Army is not required to grant them either. Moreover, the regulation permits the authorizing official to authorize or approve a second trip for a traveler upon the death of a previously ill family member, but the regulation does not require that the travel be authorized. Therefore, Ms. Sherwood cannot claim benefits based upon what her spouse might have received.

Moreover, the regulation permits EVT for a seriously ill family member who faces "imminent death." Thus, the regulation anticipates the situation present here, in which a person travels to see someone who then dies while the person is traveling. Ms. Sherwood seeks reimbursement for her trip based solely upon the happenstance of timing. If she had traveled with her spouse while her mother-in-law was still alive, she would have received reimbursement for the cost of only one trip. If she had traveled with her spouse after her mother-in-law had passed away, again, she would have received reimbursement for the cost of only one trip. It cannot be the rule that, because she waited to travel until her mother-in-law passed away, she may sidestep the limit on the number of travelers and receive reimbursement for both her spouse's and her own trips. If this were the rule, more employees stationed abroad would seek to time their travel in this manner and avoid the limitations on the number of travelers. The regulation provides that the Government will reimburse the travel costs of only one family member, unless the agency determines that one of the exceptions applies. *Zbydniowski*. Since none of those exceptions apply to this situation, Ms. Sherwood may not receive reimbursement for her travel to her mother-in-law's funeral.

Decision

Ms. Sherwood's claim is denied.

MARIAN E. SULLIVAN
Board Judge