



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 29, 2016

CBCA 5073-TRAV

In the Matter of JERRY W. PADGETT

Jerry W. Padgett, Warner Robins, GA, Claimant.

Timothy J. Ryan, Office of General Counsel, Defense Logistics Agency, New Cumberland, PA, appearing for Department of Defense.

WALTERS, Board Judge.

Claimant, Jerry W. Padgett, a civilian employee of the Department of Defense (DoD), Defense Logistics Agency (DLA), Warner Robins, Georgia, seeks review of his agency's denial of a claim for reimbursement of certain expenses in conjunction with his temporary duty (TDY) travel to Kabul, Afghanistan, from August through November 2014. For the reasons explained below, of the \$758 claimed, we grant a total of \$108.

Background

On June 21, 2014, DLA requested a civilian or military volunteer with supply, storage, and distribution management experience to deploy to Afghanistan for ninety days as a member of a DLA Logistics team to support the Combined Security Transition Command – Afghanistan. Claimant was selected as a civilian volunteer for this assignment on July 1, 2014, and the DLA Distribution Approving Official (AO) prepared travel orders for claimant's TDY travel. The orders state that the TDY assignment was for an "EMERGENCY ESSENTIAL POSITION IN SUPPORT OF THE CENTCOM AOR [United States Central Command Area of Responsibility]," and indicate that all meals and lodging were to be furnished to claimant by the Government without cost to claimant. Although the orders show a total estimate of \$643 for reimbursement of meals and incidental

expenses, the orders do not state what daily rates would apply to what segments of claimant's TDY travel.

On August 8, 2014, claimant departed from his permanent duty station (PDS) in Warner Robins, Georgia, and arrived at the CONUS [Continental United States] Replacement Center (CRC) located at Fort Bliss, Texas, where he remained until his departure for Afghanistan on August 15.¹ On August 16, claimant entered the CENTCOM AOR² and had a brief layover in Kuwait. On August 17, he arrived in Bagram, Afghanistan, had another brief layover there, and arrived at his TDY destination in Kabul, Afghanistan, on August 18.

During his TDY in Afghanistan, claimant billeted at Kabul International Airport (KAIA). This facility is home to the North American Treaty Organization's (NATO) International Security Assistance Force (ISAF) as well as the United States Air Force (USAF) 438th Air Expeditionary Advisory Group. The USAF section of KAIA had dormitories as well as military dining facilities, where meals were provided at no cost to United States military personnel and DoD civilian employees such as claimant.

On several occasions during his TDY, claimant traveled to other military bases in Afghanistan and within the CENTCOM AOR, including Kandahar and Bagram, to conduct training and provide other services to the Combined Security Transition Command – Afghanistan and Afghan National Forces. Per claimant's travel orders, he was to be provided no-cost lodging and meals at all these locations.

On November 11, 2014, claimant departed from KAIA for his return trip home. He arrived in Kuwait, on November 12, and had a layover there of several days. On November 16, he took a 1:00 am flight from Kuwait International Airfield, and he arrived at the CRC in Fort Bliss, Texas, on November 17, 2014, for out-processing. On November 18, he arrived back at his PDS in Warner Robins, Georgia.

In preparing his claim for travel reimbursement, which he submitted on or about December 12, 2014, claimant altered the various per diem amounts that the AO had entered into the Defense Travel System (DTS) when the travel orders were initially generated. These changes included *inter alia* increasing the incidental expense (IE) per diem rate from \$3.50

¹ The CRC is where military and DoD civilians in-process and out-process for Overseas Contingency Operations (OCO).

² The CENTCOM AOR encompasses Northeast Africa and the Middle East, as well as Central and South Asia. It consists of twenty nations, including Afghanistan and Kuwait. <http://www.centcom.mil/aor>.

to \$6.00 for all TDY days spent at KAIA, and substituting for the \$3.50 per day rate varying locality meals and incidental expense (M&IE) rates for the other locations to which he had traveled within Afghanistan as well as for locations en route to and from the CENTCOM AOR.

On December 17, 2014, the AO rejected claimant's voucher and directed claimant to adjust the M&IE per diem rates back to the values originally assigned when the travel orders were issued. From late December 2014 until early March 2015, claimant appealed the AO's determination to multiple authorities within DoD. The DLA Distribution Chief of Staff, DLA Headquarters Travel Services Division, the Defense Travel Management Office (DTMO)³ and DLA Headquarters Office of the General Counsel each affirmed the AO's determination as being in accordance with DOD's Joint Travel Regulations (JTR). On November 18, 2015, claimant filed this appeal with the Board seeking further reimbursement in the total amount of \$758. Claimant provided the Board with a detailed breakdown of the claim elements and amounts. The following chart summarizes that breakdown:

Date(s)	Location	Claimant's Voucher	DLA's Voucher	Remedy Sought
8/15/14	En Route from Fort Bliss to Kuwait (Stopover)	\$113.00	\$3.50	\$109.50
8/16/14 – 11/14/14	Billeted at KAIA and Traveling within the CENTCOM AOR	\$900.00	\$318.50	\$581.50
11/15/14	Final Day of Kuwait Stopover (Homebound Flight Departed Kuwait at 1:00 am 11/16/14)	\$72.00	\$51.00	\$21.00
11/16/14	En Route to Fort Bliss from Kuwait (Full Day Travel)	\$51.00	\$5.00	\$46.00
Totals:		\$1,136.00	\$378.00	\$758.00

Discussion

1. M&IE Entitlement while Claimant was in the CENTCOM AOR

The Federal Travel Regulation (FTR), which governs travel reimbursement for all federal civilian employees, including employees of the DoD, specifically notes that a civilian traveler's "M&IE allowance must be adjusted for meals furnished . . . by the Government." 41 CFR 301-11.18 (2014). The JTR, which implement the FTR and govern travel by both uniformed service members and DoD civilian employees such as claimant, provide further

³ DTMO provides travel services to DoD and its component agencies.

guidance for the per diem to be reimbursed where, as here, both meals and lodging are to be provided to the traveler at no cost to the traveler:

A. General. On a day that all meals and lodging are provided without cost to a traveler [in connection with] a TDY or a training assignment, the per diem is:

....

2. OCONUS⁴:

a. \$3.50 IE, if the employee is TDY to a U.S. Installation and lodges in GOV'T QTRS on that U.S. Installation,

JTR C4220-A. This OCONUS daily IE rate likewise was prescribed by a March 24, 2010, memorandum from the CENTCOM Chief of Staff, which states, in pertinent part: “For those individuals . . . deployed in support of contingency operations in the CENTCOM AOR, whose billeting and meals ARE provided by the government, the per diem rate for incidentals expenses remains at \$3.50 per day.”

The parties are in disagreement as to whether claimant’s lodging while stationed at KAIA was lodging on a U.S. installation. Claimant contends his lodging was within the ISAF section of KAIA; the agency contends that claimant’s lodging was within the USAF section, and maintains that the USAF section qualifies as a U.S. installation for purposes of the regulation.⁵ If an employee on TDY OCONUS is not lodged in quarters at a U.S. installation, the JTR provides for the locality per diem rate to apply. JTR C4200-C.1.c. In this case, claimant maintains that the locality rate of \$6.00 per day for the ISAF side of KAIA should have been paid, rather than the \$3.50 per day that was paid. Also, the parties are in disagreement as to whether claimant was furnished with cost-free meals while traveling to other bases within Afghanistan. Claimant asserts that cost-free meals were not furnished, and thus claims the M&IE rates for each of those locations for the days in question when he

⁴ OCONUS is an acronym for Outside the Continental United States.

⁵ The JTR defines a “U.S. Installation” as a “base, post, yard, camp or station: (a) [u]nder the local command of a uniformed service, (b) [w]ith permanent or semi-permanent-type troop shelters and a **GOV’T DINING FACILITY/MESS**, and (c) [a]t which there are U.S. GOV’T operations.” JTR App. A (emphasis in original). The USAF portion of KAIA fits within that definition, as it has Government dining facilities, permanent USAF dormitories, and its own internal USAF security. And there is no dispute that government operations are conducted within the USAF segment of KAIA.

was away from Kabul. DLA contends that all meals were furnished him cost-free and that the \$3.50 per day IE rate was properly paid claimant.

The Board has repeatedly held that a claimant must bear the burden of proof when it comes to establishing entitlement to additional reimbursement. *Renee Cobb*, CBCA 5020-TRAV, 16-1 BCA ¶ 36,240, at 176,819 (quoting *Gary Twedt*, GSBICA 16905-RELO, 06-2 BCA ¶ 33,433, at 165,744; *see also*, *Amy Andress*, CBCA 757-TRAV, 07-2 BCA ¶ 33,636, at 166,585 (claimant must establish all elements of his claim)). In support of its contentions, the agency furnished a sworn declaration of claimant's team leader while on TDY. In light of the team leader's declaration, it cannot be said that claimant has sustained his burden of proof here as to either establishing that he was not lodged on a U.S. installation in Kabul or that meals were not furnished to claimant cost-free while he was elsewhere in Afghanistan.

In *Ruthanne S. Darling*, CBCA 1461-TRAV, 09-2 BCA ¶ 34,153, we held that the Defense Finance and Accounting Service (DFAS) was entitled to recover an overpayment to a traveler resulting from the use of a commercial per diem rate instead of the \$3.50 daily OCONUS IE rate prescribed by the JTR. In *Darling*, as here, the claimant's travel orders noted that meals and lodging would be provided at no cost but were not specific as to per diem IE rates. *Id.* There, too, the TDY was to a Combatant Command (COCOM) AOR where a policy memorandum circulated by the COCOM commander – in the same manner as the above-mentioned memorandum of the CENTCOM Chief of Staff – set the IE rate at \$3.50 per day. *Id.* Despite being troubled by the failure of the travel orders in that case to note the applicable per diem rate(s), the Board found that the policy memorandum and the JTR mandated the \$3.50 per diem IE rate for OCONUS assignments where all meals and lodging are provided without cost to the traveler and that, accordingly, the agency was entitled to recover all amounts reimbursed above that \$3.50 per day rate. *Id.* Certainly, in the present case, where the agency is not seeking to recover an overpayment, but merely to justify its decision not to pay claimant anything above the \$3.50 per day rate while claimant was within the CENTCOM AOR, the same conclusion should apply.

Claimant's travel orders specifically note that he was to “[d]eploy to support [the] OSD [Office of the Secretary of Defense] mission as directed by DLA HQ” Claimant seeks to avoid the \$3.50 daily IE rate by contending that his TDY within the CENTCOM AOR was not in support of the OSD mission, but rather was in support of NATO. Claimant provides nothing to establish that support of NATO would be inconsistent with the OSD mission and, although claimant cites to NATO memoranda referencing a need for his expertise, to his out-processing from Kabul by ISAF, and to his award of a NATO medal, none of these demonstrate that his purpose of being in Afghanistan was anything other than to support the OSD mission. In connection with the aforementioned CENTCOM Chief of Staff memorandum, claimant further contends that he was not supporting a CENTCOM “contingency operation,” because he is a civilian employee. As claimant indicates, Appendix

A of the JTR does indeed describe contingency operations as involving armed forces members and “military actions, operations, or hostilities against an enemy of the U.S. or against an opposing military force.” JTR App. A. However, it does not limit involvement in contingency operations to members of the armed forces or imply that civilian employees of the DoD such as claimant cannot provide support to DoD contingency operations, such as ongoing contingency operations within the CENTCOM AOR. Under the circumstances, applying to claimant the \$3.50 daily IE rate specified in the CENTCOM Chief of Staff memorandum while claimant was deployed in the CENTCOM AOR appears to have been completely appropriate.

The JTR provides that travel between locations within the same AOR is “not traveling for M&IE purposes.” JTR C4605-B.1.c. The JTR per diem computation examples specifically address intra-AOR travel, showing that the \$3.50 rate is used for all travel days within the AOR. JTR C4280-D.5. The CENTCOM Chief of Staff’s policy memorandum likewise makes plain that all travelers while deployed in the CENTCOM AOR are subject to the \$3.50 per diem IE rate. Thus, we cannot grant those elements of the claim totaling \$581.50, pertaining to the period August 16 through November 14, 2014, while claimant was billeted at KAIA or traveling elsewhere within the CENTCOM AOR in support of the OSD mission.

In addition, since the CENTCOM AOR includes Kuwait, the \$3.50 per diem IE rate was correctly applied for all travel days claimant spent in the CENTCOM AOR while en route to and from his TDY station in Kabul, beginning with claimant’s arrival in Kuwait on August 16, 2014, and continuing until his departure from the CENTCOM AOR via a flight from Kuwait on November 16, 2014. The JTR provides that the per diem rate for any day is determined by location and TDY status as of midnight on that day, that is, at the end of the day, 2400 hours. JTR C4060-A. Since claimant had yet to exit the AOR as of midnight (2400 hours) on November 15, the last day of his layover on the way home, the correct per diem IE rate for that day was \$3.50. Both the claimant’s assertion of entitlement to the \$72 Kuwait locality per diem M&IE rate and DLA’s assignment of the \$51 per diem M&IE rate for Fort Bliss, Texas, for November 15 were erroneous. Accordingly, not only is claimant not entitled to the additional \$21 he has claimed beyond the \$51 paid for that day, but the \$51 he was reimbursed represented an overpayment of \$47.50. Any recovery to which claimant may otherwise be entitled should be reduced by \$47.50 based on this DLA overpayment for November 15.

2. M&IE Entitlement while Claimant was not in the CENTCOM AOR

As claimant indicates, the JTR provides that the “\$3.50 IE rate does not apply on any day the employee is traveling into and out of the AOR.” JTR C4200-C.4.b. While DLA correctly applied the \$3.50 IE per diem rate for claimant’s travel within the CENTCOM AOR, the agency did not properly reimburse him for the TDY travel days of August 15 (traveling to the AOR) and November 16 (returning from the AOR). At midnight (2400 hours) on August 15, claimant was still en route to Kuwait and had yet to enter the CENTCOM AOR. The JTR provides that, for each full calendar day a traveler is in travel status and lodging is not required, the per diem is the next destination’s M&IE rate. JTR C4075-B. Here, claimant should have received the \$113 locality per diem rate for M&IE⁶ set by DTMO for his next destination, Kuwait. Thus, claimant is entitled to an additional \$109.50 in M&IE for his travel on August 15 beyond the \$3.50 DLA paid him.

Similarly, on November 16, at midnight (2400 hours), claimant was still en route from Kuwait to Fort Bliss, Texas (his flight having departed Kuwait at 1:00 a.m. on that date). Claimant should have received the \$51 locality per diem M&IE rate⁷ set for his next destination, Fort Bliss, Texas. Therefore, claimant is entitled to \$46 in additional M&IE reimbursement for his travel on November 16. This figure represents the difference between the \$5 per diem CONUS IE rate DLA reimbursed to the claimant (and that was applicable once he arrived at the U.S. installation at Ft. Bliss) and the \$51 it should have reimbursed him for the November 16, 2014, travel day.

In summary, then, the agency properly applied the \$3.50 IE per diem rate when reimbursing claimant for all days spent within the CENTCOM AOR. Claimant is, however, entitled to a net total of \$108, representing the amounts underpaid for August 15 (\$109.50) and November 16 (\$46), less the \$47.50 of DLA overpayment for November 15.

⁶http://www.defensetravel.dod.mil/Docs/perdiem/browse/Allowances/Per_Diem_Rates/Text_Only/OCONUS-Overseas/2014/ovs14-08.pdf.

⁷http://www.defensetravel.dod.mil/Docs/perdiem/browse/Allowances/Per_Diem_Rates/Text_Only/OCONUS-Overseas/2014/ovs14-08.pdf.

Decision

For the foregoing reasons, the claim is granted in the amount of \$108.

RICHARD C. WALTERS
Board Judge