



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 10, 2016

CBCA 5261- TRAV, 5300-TRAV, 5301-TRAV, 5302-TRAV

In the Matters of CHRISTOPHER L. HARE, SUSAN L. SMITH,
DEBORAH A. RICHEY, MARY J. FERGUSON

Christopher L. Hare, Attica, IN, Claimant in CBCA 5261-TRAV.

Susan L. Smith, Attica, IN, Claimant in CBCA-5300-TRAV.

Deborah A. Richey, Attica, IN, Claimant in CBCA 5301-TRAV.

Mary J. Ferguson, Attica, IN, Claimant in CBCA 5302-TRAV.

Joseph A. Spain, Jr., Director, Financial Management Division, Office of Budget and Finance, Farm Service Agency, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

WALTERS, Board Judge.

Claimants Christopher L. Hare, Susan L. Smith, Deborah A. Richey, and Mary J. Ferguson are employees of the Department of Agriculture's Farm Service Agency (FSA). Their permanent duty station (PDS) is at the Fountain County Service Center in Covington, Indiana. Since March 2011, these individuals have been working from what was to be a temporary office in Attica, Indiana. Their claims seek reimbursement for the additional local travel costs (mileage) they incurred from March 24, 2011, through June 30, 2014, to travel to that temporary office. The agency has been reimbursing them for those extra local travel costs, beginning on July 1, 2014, but thus far had denied their claims for the earlier period, because those claims had not been presented within the same fiscal years when they were incurred, contrary to agency guidance. Nevertheless, the agency has indicated that it would reconsider its rejection of the claims were the claimants to provide additional documentation

excusing their failure to make earlier submittals during the fiscal years in question. It further has indicated that it does not dispute the quantum of the claims as submitted. For the reasons explained below, the Board finds the additional documentation presented by the claimants adequate to justify payment of the claims for the period March 24, 2011, through June 30, 2014, and grants the claims.

Background

On March 24, 2011, as a result of the aftermath of an ice storm in February 2011 and the discovery of a “severe mold problem” on the premises, the claimants were moved from their permanent duty station (PDS), FSA’s Fountain County Service Center in Covington, Indiana, to what was supposed to be a temporary office in Attica, Indiana.

At some point in February 2011, when the “temporary” move to Attica was under discussion, the matter of payment for excess mileage to the temporary office was raised and a person in authority at the agency (identified to the Board as the former Administrative Officer of the Farm Service Agency) advised that, because the Attica office was located within the same Indiana county, i.e., Fountain County, the agency would not entertain claims for excess mileage from the Covington office personnel. For that reason, claimants have asserted, they did not initially submit claims for excess mileage reimbursement for the period March 24, 2011, through June 30, 2014. Prompted by subsequent discussions with agency officials who indicated that such claims might be entertained, however, they did submit claims for that period as well as for subsequent periods. Their claims for all subsequent periods, beginning on July 1, 2014, have been paid by the agency and are not under review. In rejecting their claims for the earlier period, the agency cited to agency guidance in the Agriculture Travel Regulations (ATR), which calls for local travel claims to be presented “within the fiscal year the expenses were incurred.” The agency, though acknowledging the reasonableness of claimants’ explanation for their delay in claim submittal, would not deviate from that agency guidance, maintaining that the claims for that earlier period still could not be honored, because there was no “documentation” of the alleged agency advice cautioning against submittal of local travel claims for the extra mileage in question. The claimants sought Board review with regard to the agency’s rejection of their claims for the earlier period.

Discussion

It is not clear whether the agency guidance in the ATR is in conflict with the overall six-year statute of limitations for submission of travel claims, as set forth in the applicable statute, 31 U.S.C. § 3702(b)(1) (2012). *See Jorge J. Martinez*, CBCA 2265-RELO, 11-1 BCA ¶ 34,704. In any event, the agency has indicated to the claimants and to the Board that

it would reconsider its rejection of the claims at issue were additional documentation furnished to establish that the submission delay was attributable to the agency itself. This willingness on the part of the agency appears to be both reasonable and in line with case precedent that makes plain that claimants need not exhaust administrative remedies where doing so would represent a futile effort. *Scott E. Beemer*, CBCA 4250-RELO, 15-1 BCA ¶ 35,960. The agency has further acknowledged that were claimants to document adequately that their non-submittal of claims for the period in question is attributable to agency advice against such claim submissions, it will not dispute the quantum of claimants' retroactive mileage expense claims for the period in question.

In response to the Board's request, each of the claimants submitted a sworn declaration under penalty of perjury, pursuant to 28 U.S.C. § 1746, providing additional detail about a telephone conversation with the FSA Administrative Officer in February 2011¹, during which that individual stated that the agency would not reimburse any of the individuals in the Covington office for their extra mileage costs in traveling to the temporary office in Attica, Indiana. More particularly, according to the sworn declarations, the Administrative Officer "clearly stated that since the temporary office located in Attica" is "still physically in Fountain County, the employees affected would not receive travel for any mileage or expenses outside [their] normal commute." In addition, according to those declarations, the agency Administrative Officer stated that "if the affected employees were to be relocated [from Covington] to Rockville (Parke County, Indiana) or Williamsport (Warren County, Indiana) then travel would be authorized." Each claimant, as part of the sworn declarations, confirmed the Administrative Officer's February 2011 advice as the reason he or she did not file their claims within the fiscal years in question. Each indicates that the telephone call was not transcribed or recorded in any document. They each further relate that this agency official, now retired, was recently contacted by the current Administrative Officer and, when asked specifically about the February 2011 telephone conversation, indicated that he had no present recollection of it or of any reason he may have had for refusing to entertain local travel claims for excess mileage expended in traveling to the temporary office. By the same token, no evidence has been presented to challenge the claimants' sworn statements and, based on the record, the Board finds that the agency should be satisfied that the facts relating to the agency advice cautioning against claim submission in February 2011 have been adequately documented, sufficient to justify payment of the earlier claims.

¹ Although the declarations do not indicate whether all four claimants had personally participated in this telephone conversation, it is clear that claimant Hare, the County Executive Director and the supervisor of the other claimants, had done so.

As noted above, the agency has stated that it takes no issue with the dollar amounts sought by each claimant. In this regard, the claimants have confirmed that those dollar amounts represent mileage costs they have incurred over and above what they ordinarily would have incurred to commute from their homes to the PDS in Covington. Local travel to an alternative worksite should exclude the costs of commuting to and from the traveler's PDS. *Donald C. Barnes*, CBCA 4089-TRAV, 15-1 BCA ¶ 35,985, at 175,812 (citing *Kenneth R. Chaney*, CBCA 3220-TRAV, 13 BCA ¶ 35,304). Accordingly, the amounts sought appear to be properly computed.

Decision

The claims are granted.

RICHARD C. WALTERS
Board Judge