



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 24, 2017

CBCA 5409-TRAV

In the Matter of MICHAEL G. VALLE

Michael G. Valle, Troy, NY, Claimant.

Brian J. Godard, Chief Arsenal Counsel, Watervliet Arsenal, Department of the Army, Watervliet, NY, appearing for Department of the Army.

KULLBERG, Board Judge.

Claimant, Mr. Michael G. Valle, seeks reimbursement of per diem at the full rate for meals and incidental expenses (M&IE) less his previous reimbursement while he was on temporary duty (TDY). The agency, the Department of the Army (Army), contends that it properly reduced reimbursement for the M&IE portion of Mr. Valle's per diem to \$11.55, which was the daily cost for meals at his TDY location. For the reasons stated below, the claim is granted.

Background

By orders dated June 13, 2012, Mr. Valle, a security guard at Watervliet Arsenal (WVA), Watervliet, New York, performed TDY from June 30 to August 31, 2012, at Fort Leonard Wood (FLW), Missouri, so that he could attend the Army's Civilian Police Academy (DACPA). The printed portion of block 13a of his TDY orders, which read "per diem authorized in accordance with JTR," was checked, and the printed portion of block 13b, which read "other rate of per diem (specify)," was not checked. There is no documentary evidence in the record that shows that the Army sought and received approval for paying Mr. Valle per diem at a lesser rate than the rate authorized for his TDY location.

While attending the DACPA, Mr. Valle was provided with lodging at no expense. Meals at government dining facilities were available at a daily cost of \$11.55, which included breakfast (\$2.45) and lunch and dinner (\$4.55 each). Upon his return from TDY, Mr. Valle was reimbursed for the M&IE portion of his per diem for the days he attended DACPA, July 1 to August 30, 2012, at a daily rate of \$11.55.

Subsequently, Mr. Valle determined that he had not been properly reimbursed for the M&IE portion of his per diem, and on July 20, 2016, he submitted an amended travel voucher in the amount of \$2101.45 for the difference between the M&IE portion of per diem at the full rate and his previous reimbursement while he attended DACPA from July 1 to August 30, 2012.¹ Additionally, Mr. Valle sought interest on his claim. The Army denied Mr. Valle's claim, and he submitted his claim to the Board.

Discussion

The issue in this matter is whether the Army properly reduced Mr. Valle's reimbursement for the M&IE portion of his per diem to \$11.55 for the days he attended the DACPA. Statute provides that "an employee, when traveling on official business away from the employee's designated post of duty, or away from . . . home or regular place of business . . . is entitled to . . . a per diem allowance at a rate not to exceed that established by the Administrator of General Services." 5 U.S.C. § 5702(a)(1) (2012). The Federal Travel Regulation (FTR), which applies in this matter, states the following:

Under what circumstances may my agency prescribe a reduced per diem rate lower than the prescribed maximum?

Under the following circumstances:

- (a) When your agency can determine in advance that lodging and/or meal costs will be lower than the per diem rate; and
- (b) The lowest authorized per diem rate must be stated in your travel authorization in advance of your travel.

41 CFR 301-11.200 (2011) (FTR 301-11.200).

¹ Mr. Valle's claim references a per diem rate for M&IE in the amount of \$46.

The Joint Travel Regulations (JTR), which also apply to Mr. Valle, state the following:

When it can be determined factually that a per diem rate prescribed in this Part is in excess of need for a particular duty assignment because of known lodging and/or meal costs reductions resulting from pre arrangement, special discounts, or other reasons (par. C4550-B), the [authorizing official (AO)] should seek authority to prescribe a reduced per diem lower than the applicable rate prescribed in this Part. ***Such authority must be requested and authorized prior to the travel.***

JTR C4550-C. “A [Department of Defense (DoD)] COMPONENT head or Secretary Concerned may authorize (in advance) zero per diem or per diem rates in lesser amounts” *Id.* C4550-D. Such authority “***may be delegated*** to a chief of an appropriate bureau or staff agency of the headquarters of the DoD COMPONENT concerned ***and may not be redelegated.***” *Id.*

The documentary record in this matter does not show that the Army took any action consistent with the above-referenced FTR and JTR provisions to seek the proper authority to reduce the M&IE portion of Mr. Valle’s per diem to \$11.55 in advance of his TDY. It is well recognized that an employee’s per diem while on TDY can only be reduced if those procedures under the FTR and JTR are followed and that the reduced per diem is reflected in the employee’s orders. *See Jeremy L. Parr*, CBCA 4641-TRAV, et al., 15-1 BCA ¶ 36,129, at 176,353; *Steven L. Meints*, CBCA 2921-TRAV, 13 BCA ¶ 35,249, at 173,042. Mr. Valle’s TDY orders stated that he was to be paid per diem in accordance with the JTR, and nothing in his orders indicated that the M&IE portion of his per diem was to be reduced to \$11.55. The Board finds, consequently, that Mr. Valle was not properly reimbursed for the M&IE portion of his per diem while he attended DACPA, which was from July 1 to August 30, 2012, and he is entitled to receive the difference between the full rate of the M&IE portion of his per diem at that location and his previous reimbursement of \$11.55 per day during that same period.

The Army contends that the DACPA “schoolhouse commander” had authority under JTR C4554-A to establish a reduced rate for meals. That section of the JTR provides, in pertinent part, the following:

The schoolhouse commander is authorized to determine the appropriate meal rate . . . regardless of what the AO may put in a TDY order to the contrary If there is information about the course that provides the appropriate meal rate, that information, and its source should be documented

in the order. If that information is not available prior to order issuance, it must be provided to the traveler by the schoolhouse commander (or designee) upon arrival at the school and submitted with the travel voucher.

JTR 4554-A.3. There is, however, no contemporaneous documentary evidence that supports the Army's contention that the DACPA established a rate for reimbursement for students' meals in accordance with that JTR provision for those days when Mr. Valle was on TDY. Moreover, the Army submitted a March 31, 2017, memorandum, from the Law Enforcement Operations Branch at FLW that stated that the DACPA "does not control, nor influence, how a unit compensates its employees while on TDY." That memorandum also stated that the "Main Exchange and Shopettes were available . . . for food and convenience/incidental items." Not only does that memorandum indicate that the DACPA does not have any current role in setting per diem for students, it is silent as to ever having done so. The Board, accordingly, finds that while DACPA had authority to set a rate for reimbursement for students' meals, the record does not show that such a rate was set by the "schoolhouse commander" and that such was in effect when Mr. Valle was on TDY as a student.

Additionally, the Army asserts that funding was limited under a "pilot program" for WVA employees, including Mr. Valle, who attended the DACPA. The Army also asserts that those employees acknowledged that reimbursement for meals would be \$11.55 per day. Again, there is no contemporaneous documentary evidence to show that Mr. Valle ever acknowledged in advance of his TDY that he would be receiving a reduced per diem, and he has represented that he never received such notice before his TDY. Moreover, a lack of funds would not relieve the Army of its responsibility to follow the above-discussed JTR and FTR provisions in order to reduce Mr. Valle's per diem. *See William G. Sterling*, CBCA 3424-RELO, 14-1 BCA ¶ 35,483, at 173,961 (2013).

Mr. Valle also seeks to collect interest on the amount of his claim. The Board has recognized that under the Travel and Transportation Act of 1998, "Congress . . . waived sovereign immunity by granting interest to employees on certain tardy payments." *Nicholas J. Thacker*, CBCA 4981-RELO, 16-1 BCA ¶ 36,231, at 176,765-66. (citing Pub. L. No. 105-264, § 2(g), 112 Stat. 2350, 2352 (1998)). The FTR provides that an "agency must reimburse [an employee] within 30 calendar days after [he or she] submit[s] a proper travel claim." FTR 301-52.17. The "agency must pay [the employee] a late payment fee, in addition to the amount due [him or her], for any proper travel claim not reimbursed within 30 calendar days of [his or her] submission of it to the approving official." *Id.* 301-52.19. An agency must either:

- (a) [c]alculate late payment fees using the prevailing Prompt Payment Act Interest Rate beginning on the 31st day after submission of a proper travel claim and ending on the date on which payment is made; or
- (b) [r]eimburse [the employee] a flat fee of not less than the prompt payment amount, based on an agencywide average of travel claim payments.

Id. 301-52.20. The record shows that Mr. Valle submitted a voucher for the payment of the M&IE portion of his per diem on July 20, 2016. Accordingly, Mr. Valle is entitled to interest on his claim from the thirty-first day subsequent to July 20, 2016, until paid.

Decision

The claim is granted with the amount to be determined in accordance with this decision.

H. CHUCK KULLBERG
Board Judge