UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 14, 2017

CBCA 5418-TRAV

In the Matter of J. JACOB LEVENSON

J. Jacob Levenson, Plymouth, MA, Claimant.

Teresa L. Weaver, Chief, Finance Office, Bureau of Safety and Environmental Enforcement, Department of the Interior, Sterling, VA, appearing for Department of the Interior.

**LESTER**, Board Judge.

In February 2015, claimant, J. Jacob Levenson, departed on temporary duty (TDY) travel not from his permanent duty station (PDS) in Herndon, Virginia, but from his alternate family residence near Boston, Massachusetts. Mr. Levenson asserts that, prior to his departure on TDY, his authorizing official was aware that he intended to travel from Boston, even though, because of complications with the Concur management travel system,[1] his actual original travel authorization for the trip does not indicate that fact. He believes that he is entitled to reimbursement from his employing agency, the Department of the Interior (DOI), for the full cost of his TDY travel airfare starting and ending at his Massachusetts residence, even though it exceeds the costs that he would have incurred for TDY travel had he departed from and returned to his PDS. Although DOI initially paid for Mr. Levenson's travel costs, a subsequent audit caused it to seek reimbursement of several costs associated with his February 2015 TDY travel, including his excess airfare costs. Mr. Levenson challenges those reimbursement requests here.

[1] Concur is a travel management system that is supposed to integrate travel booking, authorizations, and vouchers into a single application.

In considering Mr. Levenson's claim, we rely on both the Federal Travel Regulation (FTR), 41 CFR ch. 300 (2015), and the Temporary Duty Travel Policy that DOI has published to implement the requirements of the FTR. *See* Department of the Interior, *Temporary Duty Travel Policy*, Amendment Version 1.0 (Feb. 1, 2015) (DOI Travel Policy). For the reasons set forth below, we grant Mr. Levenson's challenge to the agency's demand that Mr. Levenson reimburse DOI for fees that the agency incurred when he used the Concur travel management system to book his travel. Otherwise, we deny Mr. Levenson's claim.[2]

## Background

Mr. Levenson has been employed as a marine biologist with DOI's Bureau of Ocean Energy Management (BOEM) since February 2014. His official duty station is at the BOEM headquarters in Herndon, and he commutes to his official duty station on a daily basis from a residence in Severna Park, Maryland. Nevertheless, he also has a separate family residence outside of Boston. Mr. Levenson is frequently required to engage in domestic and foreign TDY travel.

BOEM receives administrative services from DOI's Bureau of Safety and Environmental Enforcement (BSEE) through an annual reimbursable support agreement. One of the services that the BSEE Finance Division provides to BOEM is managing the administrative, operational, and reporting functions of BOEM's travel program. BSEE has represented that, as part of those services, it audits all BOEM employee travel vouchers prior to approving them for payment.

On February 5, 2015, Mr. Levenson submitted a travel authorization to his BOEM supervisor seeking permission to travel on TDY to Wilmington, North Carolina, and Jacksonville, Florida, from February 17 through 20, 2015, to attend programmatic environmental impact statement (PEIS) scoping meetings. That travel authorization, which was approved by the BOEM authorizing official on the day that it was submitted, did not indicate the location from which Mr. Levenson intended to depart. Nevertheless, using the Concur travel management system that, since August 2013, BOEM has utilized as its E-Gov travel service (ETS), Mr. Levenson planned his travel so that he would depart for Wilmington from his family residence near Boston and return to Boston from Jacksonville.

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[2] In its response to Mr. Levenson's claim, DOI argued that it was entitled to recover some meal expenses that had been centrally billed to a government account along with Mr. Levenson's hotel expenses. Mr. Levenson did not challenge that cost recovery in his claim and does not contest the agency's collection of those meal expenses. Accordingly, we do not address those costs in this decision.

Mr. Levenson indicated during a telephonic status conference that the Board conducted with the parties that, even if his departure and return location was not clear from Concur (through which the travel authorization had been processed), his supervisors were aware prior to his travel that he would depart from and return to his residence outside Boston rather than his PDS. Mr. Levenson subsequently commenced his travel from Boston, as planned, and returned there at the end of his TDY.

A few weeks later, on March 14, 2015, Mr. Levenson submitted an amendment to his travel authorization through Concur, making clear that the departure and return were from and to his family residence near Boston, rather than from his PDS. The authorizing official approved the amended travel authorization on March 16, 2015.

On March 17, 2015, Mr. Levenson submitted a voucher for his travel expenses, which his authorizing official approved and then submitted to the BSEE Finance Division for processing on March 23, 2015. BSEE then began an audit of Mr. Levenson's travel voucher (a review that it asserts it conducts of all BOEM travel vouchers) on April 9, 2015. On the initial audit, the BSEE auditor returned the voucher to Mr. Levenson requesting correction of perceived deficiencies. After Mr. Levenson resubmitted it, the same auditor returned it on April 16, returned another resubmission on April 28, and returned yet another resubmission on May 15, each time asking for additional supporting documentation. When Mr. Levenson resubmitted his voucher on June 30, 2015, a different auditor reviewed it and then stamped it in Concur as approved on July 9, 2015, and the voucher was apparently paid on July 10, 2015. BSEE asserts that the July 9 approval was an inadvertent mistake and that the auditor was unable to rescind the approval because, once a voucher is stamped as approved in Concur, there is no recall button that would allow BSEE to stop payment. It does not appear from the record that BSEE took any action at that time, either through or outside of the Concur system, to attempt to recoup that payment.

BSEE asserts that, in mid-August 2015, the original BSEE auditor realized that she had not heard back from Mr. Levenson about his voucher and that, when she accessed Concur to review the voucher's status, discovered that another auditor had authorized payment. After further review, she determined that there were still outstanding issues from the pre-payment audit. Accordingly, she commenced a post-audit review of Mr. Levenson's travel voucher and determined that Mr. Levenson had been overpaid for his TDY travel. On June 8, 2016, Mr. Levenson was notified of the agency's finding that he had been overpaid for his TDY travel by a total of $1172.31, an amount that BSEE subsequently revised before the Board to $1279.82. The largest component of that $1279.82 figure related to excess airfare costs associated with Mr. Levenson's travel from Boston rather than from the location from which the auditor believed Mr. Levenson should have traveled, Baltimore-Washington International Airport (BWI). Mr. Levenson's flights from and to Boston cost more than

flights from and to BWI would have cost, and the auditor found Mr. Levenson responsible for the excess costs in the amount of $714.26. The remaining amounts within the alleged overpayment related to various other costs that Mr. Levenson had incurred during his travel, as well as to a government claim against Mr. Levenson of $75.46 for excess fees that the Concur system had imposed upon the agency. BSEE demanded repayment of $1279.82.

Mr. Levenson subsequently asked the Board to review his challenge to the agency's demand for repayment. After reviewing Mr. Levenson's claim, the agency's response, and the various attachments to those documents, the Board was unable to find any record support for Mr. Levenson's assertion that, prior to his departure on TDY travel, his authorizing official was aware of and had, whether through Concur or otherwise, approved his travel from Boston rather than his PDS. The Board subsequently requested additional information from Mr. Levenson to support his assertion.

On February 28, 2017, Mr. Levenson's authorizing official, at Mr. Levenson's request, submitted a statement to the Board, indicating that, in March 2015 (after Mr. Levenson had completed his TDY travel),[3] she had approved Mr. Levenson's travel authorization, knowing that he had departed from Boston rather than his PDS. She indicated that, in allowing him to travel from Boston, she had weighed several factors, including that he had been traveling a great deal for the agency prior to that time, that the agency very much needed him at the public scoping meetings that were being held, and that he had previously been approved for sick leave for a doctor's appointment in Boston that had been scheduled before the need for him to travel for these meetings had arisen. She represented that she granted approval for travel from Boston only after discussions with Mr. Levenson and BSEE auditors "where it was understood that departure from an alternate airport other than the duty station was permitted as long as specific conditions were met."

The agency submitted a response to the authorizing official's statement on March 6, 2017. It described an earlier meeting in 2014 and a series of 2014 email messages dealing with a prior TDY trip in which BSEE had explained to Mr. Levenson and his supervisors the cost implications if Mr. Levenson were to depart from Boston on TDY travel rather than from his PDS:

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[3] In her statement, the authorizing official typed a date of "March 2013." Because Mr. Levenson did not begin employment with BOEM until February 2014, we assume that the identified year was a typographical mistake and that the official meant March 2015, the month in which Mr. Levenson has represented elsewhere that his supervisor approved a travel authorization. That date is consistent with other documentation in the record.

> Two of my staff members . . . met with [a BOEM travel point-of-contact] and Mr. Levenson on July 14, 2014 and explained the FTR requirement that traveling from an alternate duty location would have to be documented and reimbursement is limited to the amount that would have been incurred had the trip been performed from his official duty station. Attached are the e-mail records of this meeting and follow-up conversations.
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> These e-mails show that both [Mr. Levenson's authorizing official] and Mr. Levenson were provided a thorough explanation of the FTR and its regulatory requirements of traveling from an alternate location in lieu of a traveler's official duty station. They had this information well in advance of Mr. Levenson making the arrangements and [the authorizing official] approving the [2015] trip under appeal. The agency reaffirms its position that Mr. Levenson did not have an official purpose for departing/returning to Boston.

In the series of email messages from 2014 attached to the agency's response, some of which were also sent to Mr. Levenson's authorizing official, questions were asked and answered regarding Mr. Levenson's ability to travel from Boston on that prior 2014 TDY trip. In those messages, BSEE indicated that "traveling from a personal preference location is not a valid justification" for asking the Government to incur extra travel costs and that, if costs of a departure from Boston exceeded the constructive costs of a departure from his PDF, Mr. Levenson would have to pay the extra costs himself.

On March 7, 2017, Mr. Levenson's authorizing official submitted another statement to the Board, stating that she "agree[d] with the statements made in [DOI's] response to [her] February 28, 2017 submission in that she recall[ed] the same meeting" that BSEE had identified "and was aware of the conditions associated with any departure from a non-duty station by Mr. Levenson." She represented that "[i]t was [her] understanding at the time" of approving Mr. Levenson's departure on TDY travel in March 2015 "that Mr. Levenson was abiding by the conditions laid out by [the BSEE] staff" – that is, that airfare with a Boston departure would cost DOI no more than would a departure from the PDF.

## Decision

(1) Excess Airfare Costs from and to Boston: $714.26

BSEE argues that Mr. Levenson deviated from the normally traveled route from his official duty station (Herndon) by departing from and returning to an alternate location (Boston) for personal reasons. It asserts that his TDY travel beginning and ending in Boston

was $714.26 higher than it would have been had he departed and returned to his PDS area, and it wants him to reimburse the agency that excess cost.

In support of its reimbursement request, BSEE quotes from the Board's decision in *Robert O. Jacob*, CBCA 471-TRAV, 07-1 BCA ¶ 33,530, in which we discussed how, pursuant to the FTR, federal employees are responsible for any increased costs that they incur for traveling by an indirect route (or by other than the "usually traveled route") or for planned travel interruptions:

> Under the [FTR] agencies are to limit payment of travel costs to those which are necessary to accomplish the mission in the most economical and efficient manner and in accordance with the rules stated throughout the FTR. 41 CFR 301-2.2, -70.1 (2005). In keeping with this policy, the FTR specifies that an employee performing a TDY assignment must "travel to [his or her] destination by the usually traveled route unless [the] agency authorizes or approves a different route as officially necessary." 41 CFR 301-10.7. If an employee travels by an indirect route, or interrupts travel for his or her personal convenience, the employee's reimbursement "will be limited to the cost of travel by a direct route or on an uninterrupted basis." If there are any additional costs occasioned by a change in route or interruption in travel, the employee is responsible for those costs. In another provision of the FTR, the employee is advised that he or she is responsible for excess costs resulting from circuitous routes and the like that are "unnecessary or unjustified in the performance of official business." 41 CFR 301-2.4.

*Id.* at 166,110. BSEE asserts that, under our decision in *Jacob*, a traveler's reimbursable travel costs can never exceed what it would have cost had the traveler started and ended his or her travel at the site of the PDS and that a traveler's approving official never has authority to depart from that rule.

The FTR indicates that an "agency may pay only those expenses essential to the transaction of official business," such as transportation and per diem expenses. 41 CFR 301-2.2 (2015). It then discusses the route by which an employee traveling on official business must travel:

> **§ 301-10.7 How should I route my travel?**
>
> You must travel to your destination by the usually traveled route unless your agency authorizes or approves a different route as officially necessary.

> **§ 301-10.8 What is my liability if, for personal convenience, I travel by an indirect route or interrupt travel by a direct route?**
>
> Your reimbursement will be limited to the cost of travel by a direct route or on an uninterrupted basis. You will be responsible for any additional costs.

*Id.* 301-10.7, -10.8. The FTR also indicates that a traveler "must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business." *Id.* 301-2.3.

Although the FTR does not expressly state that "the usually traveled route" or the "direct route" means a route directly from the traveler's PDS to the assigned TDY station and back, that is how those concepts have long been interpreted. In *Henry Neimann*, 25 Comp. Dec. 162 (1918), a decision by the Comptroller of the Treasury from August 19, 1918, a naval officer had been authorized to perform repeated travel from his regular station at Norfolk, Virginia, to Massaponax, Virginia, but, because of the remoteness of his destination, he found it more convenient to make Fredericksburg, Virginia, rather than Massaponax his headquarters while transacting official business. The Comptroller determined that any expense incurred by reason of being located at Fredericksburg that would not have been necessary had the officer been located at Massaponax was of a personal nature and was not properly chargeable to the Government:

> Since his location at Fredericksburg was for his own convenience, expenses incurred at that place can only be allowed as if taken at Massaponax, his official station; that is, *he must be considered as officially located at Massaponax, the place designated in his orders, and any expense[] incurred by reason of his being located at Fredericksburg which would have been unnecessary if he had been located in Massaponax was in the nature of a personal expense, was not officially necessary, and not properly chargeable to the Government*. Lodging and subsistence would have been just as necessary at Massaponax as at Fredericksburg, but transportation expenses between Massaponax and Fredericksburg are made necessary solely because appellant was living at Fredericksburg instead of Massaponax, his official station, and therefore not an expense for which he is entitled to reimbursement.

*Id.* at 163 (emphasis added).

That same rationale applies to a traveling employee who decides, for personal convenience, to *depart* for official travel from a location other than his official duty station: any costs that exceed what the employee would have incurred had he or she departed from

his or her official duty station area are not deemed officially necessary and are not chargeable to the Government. *See, e.g.*, *Inez J. Kelly*, CBCA 4814-TRAV, 16-1 BCA ¶ 36,456, at 177,670 ("The usually traveled route contemplates round trip travel originating from the employee's official duty station."); *Lawrence O. Hatch*, B-211701 (Nov. 29, 1983) (the "usually traveled route" for TDY travel is departure from PDS, travel to TDY site, and return to PDS). This principle is encompassed within sections 301-10.7 and 301-10.8 of the FTR, which "strictly limit[] reimbursement for TDY travel to the constructive cost of a round trip originating and ending at the PDS even if the travel orders authorized departure from and/or return to another location to accommodate the personal circumstances of the traveler." *Robert O. Jacob*, 07-1 BCA at 166,110.

There is an exception to the rule that the employee, to obtain full travel cost recovery, must depart from his or her official duty station, which is when the employee's "agency authorizes or approves a different route as officially necessary." 41 CFR 301-10.7. That exception contains two elements, both of which must be satisfied if the agency is to bear all costs associated with the employee's travel from (and back to) the alternative TDY departure location: (1) the authorizing official must have authorized or approved the alternate route (including departure from a location other than the PDS), and (2) the official must have found that the alternate route was "officially necessary." *Id.* The Board and its predecessor in travel and relocation matters, the General Services Board of Contract Appeals (GSBCA), have opined on several occasions about if and when an agency may approve an employee's departure on TDY travel from an alternate location, including the location of a second home, sometimes with arguably conflicting results. *Compare Karl R. Oroz*, GSBCA 16077-TRAV, 03-2 BCA ¶ 32,350, at 160,051 ("in light of claimant's particular and unique employment and residential circumstances," with a family residence in Norcross and a part-time residence near the employee's PDS from which the employee commuted to and from work, "claimant and the agency reached an understanding that Norcross was to be the starting point for claimant's TDY travels"), *and K. Wesley Davis*, GSBCA 15623-TRAV, 02-1 BCA ¶ 31,680, at 156,551 (2001) (where the agency authorized a TDY travel departure from the location of the employee's second home, rather than his PDS, and did not notify the employee that it would limit his reimbursement to the constructive cost of a departure from the PDS, "that authorization cannot be withdrawn once the employee, on whose behalf the authorization was made, incurs expenses in reliance on it"),[4] *with Robert O. Jacob*, 07-1 BCA at 166,113

[4] Consistent with those decisions, Joint Travel Regulation (JTR) 2255-B n.6, although applicable only to civilian employees of the Department of Defense (and not Mr. Levenson's position at DOI), provides that an authorizing official "may," but is not required to, "permit the member to start/end official travel from the location at which the member (continued...)

(under the Joint Travel Regulations, "while the approving official could authorize departure from a non-PDS location to accommodate an employee's personal circumstances, the Government has no authority to incur the added cost associated with this revised route").

Mr. Levenson asserts that, consistent with the GSBCA's decision in *K. Wesley Davis*, he is entitled to full reimbursement of his airfare from and back to his second home near Boston because, before he began TDY travel, his supervisor approved his departure from that location.[5] Even if his supervisor gave such a pre-travel approval,[6] there is nothing in the record indicating that the authorizing official ever made a determination that it was "officially necessary" for Mr. Levenson to depart from and return to Boston rather than his

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[4](...continued)
maintains the family residence if it is not the residence from which the member commutes daily to the PDS." DOI's own travel policy provides that "[a] traveler enters TDY status upon departing from their residence, official duty station, *or approved alternate location*, whichever occurs immediately prior to travel." DOI Travel Policy ¶ 2.1.1 (emphasis added).

[5] We recognize that the Board in *Robert O. Jacob* has applied a stricter standard to approvals of travel originating or ending at a non-PDS than did the GSBCA in *K. Wesley Davis*, at least in situations in which the JTR applies. We need not consider here the interplay between *Jacob* and *Davis*, or *Jacob*'s application to an agency's ability to permit departure from an employee's second home, because, even under the rationale of *K. Wesley Davis*, the authorizing official, prior to the employee's departure on TDY travel, must both approve full-cost reimbursement for travel from the employee's second home and make a determination of official necessity, neither of which happened here.

[6] There is no evidence in the record to support Mr. Levenson's position that his authorizing official approved his travel from Boston before he departed on his trip. The only evidence before us indicates that the supervisor approved that departure after the fact, in March 2015, after Mr. Levenson had already completed the trip. Presumably, Mr. Levenson is hoping to rely upon the rule that, "once an agency has authorized travel or relocation allowances which it had the discretion to grant, and the employee incurs expenses in reliance on the authorization, the agency must reimburse the employee for those expenses." *Carolyn Gonzalez*, CBCA 5091-RELO, 16-1 BCA ¶ 36,307, at 177,038-39. Even if the authorizing official's approval had occurred prior to Mr. Levenson's travel, this rule would not assist Mr. Levenson. As we will explain below, the authorizing official made clear in her March 7, 2017, statement to the Board that she never intended to approve reimbursement for increased costs for travel from Boston above and beyond the constructive cost of travel from Mr. Levenson's PDS, and she has never made a determination that departure from Boston was "officially necessary."

PDS. Mere knowledge by the authorizing official of Mr. Levenson's plan to depart from an alternate location is insufficient to permit reimbursement for costs beyond those the traveler would have incurred by traveling from his PDS, particularly if no determination of "official necessity" has been made. *See Sydney Smith*, B-193923 (Jan. 3, 1980) ("in the absence of an agency determination of official necessity," agency knowledge or even approval of use of an indirect route does not permit reimbursement for increase in travel costs). Even if the authorizing official could have authorized full reimbursement for travel from and to the second home, she was not obligated to do so. *K. Wesley Davis*, 02-1 BCA at 156,551.

Absent any evidence in this record that his approving official ever provided him with the required authorization to depart from Boston at the Government's expense, with an accompanying determination that it was "officially necessary" for him to do so, his claim that he was authorized for full reimbursement of his Boston airfare costs must fail. *See Donald S. Ackerman*, CBCA 3497-TRAV, 14-1 BCA ¶ 35,540, at 174,165 (denying claim for departure for travel from and to second residence where there was no evidence that such departure was properly authorized). Any expenses that would not have been incurred had the employee traveled by the direct route from his official duty station are viewed as having been incurred "because of personal choices, not required by official business." *Michael R. Denney*, CBCA 3842-TRAV, 14-1 BCA ¶ 35,650, at 174,556. Accordingly, Mr. Levenson's reimbursement of flight expenses should have been limited to those that he would have incurred had he departed from his PDS. 41 CFR 301-10.8. He has not challenged the agency's $714.26 figure, and the agency is entitled to recover that amount from Mr. Levenson.

Mr. Levenson complains that requiring him to reimburse this excess cost is unfair because, after a significant review of his travel reimbursement request, the BSEE audit team actually approved it and, in fact, paid him his requested expenses. Although BSEE states that the auditor who approved Mr. Levenson's expenses for payment made an "inadvertent mistake" and could not reverse that mistake after hitting the "approved" button in the automated Concur system, that assertion rings hollow. There was no effort within BSEE to rescind the original audit approval for *weeks* after payment was made, and it was only when a *different* auditor from the one who approved payment stepped back into the audit process was there any objection to the payment approval. Clearly, the process here did not involve an unintentional approval by the approving auditor, as BSEE suggests, but a disagreement with the payment decision by a different auditor who, for whatever reason, undertook a renewed interest in Mr. Levenson's previously approved claim.

Nevertheless, we cannot say that the audit office is necessarily barred from reopening its post-travel review of a claim after having previously approved it for payment. Travel entitlements are governed by statute and regulation, not by contract, such that doctrines like

equitable estoppel and laches do not apply to limit an agency's ability to ensure compliance with those statutes and regulations. *Mark J. Lumer*, CBCA 2169-TRAV, 11-2 BCA ¶ 34,780, at 171,164-65. Although the audit office's delay in reopening a claim that it had previously authorized for payment (and paid) is regrettable, mere delay does not automatically invalidate the agency's actions.

Mr. Levenson also asserts that he has been subjected to "[p]ersonal and unfair targeting, to the point of harassment," by the BSEE auditor. Claim at 1. We lack authority to investigate or evaluate such claims of harassment. *Gail K. Pechuli*, CBCA 2672-TRAV, 13 BCA ¶ 35,317, at 173,369. Our delegation of authority from the Administrator of General Services only allows us to determine whether expenses claimed by a federal civilian employee for official travel and transportation are reimbursable under the applicable statutes and travel regulations. *Id.*; *see* 31 U.S.C. § 3702(a)(3) (2012). If those statutes and regulations do not provide a basis for the traveler's reimbursement, we have no authority to waive those statutory and regulatory provisions and grant entitlement simply because we object to the manner in which the agency discovered the absence of entitlement or in which the agency treated the employee during the travel reimbursement review process.

(2) Upgraded Car Charges: $62.73

DOI's written travel policy provides that, "[w]hen authorized a rental vehicle, the traveler must rent a compact size car." DOI Travel Policy ¶ 4.10.2. Nevertheless, it also provides that travelers "may request approval for vehicle upgrades" in the following circumstances: when two or more government employees, or three or more travelers, will be sharing a vehicle; when the traveler must transport a large amount of government equipment; when the traveler has a documented medical condition requiring a larger vehicle; when a traveler's physical size warrants a size increase; and when there is a need for a vehicle with off-road capabilities. *Id.* The travel policy further provides that, "[w]hen approving vehicle upgrades, the approving official must authorize the least costly vehicle size that will meet the traveler's needs." *Id.* DOI's policy is consistent with the FTR, which provides that an employee authorized to rent a car while on TDY travel "must use the least expensive compact car available, unless an exception for another class of vehicle is approved." 41 CFR 301-10.450(c); *see id.* 301-70.102(i) (agencies must establish internal policies and procedures on what will justify "use of other than a compact rental car").

While in Jacksonville, Mr. Levenson reserved and rented an intermediate-size vehicle, rather than a compact car, for a two-day total cost of $168.51. DOI contends that, having elected to obtain a rental car with an upgraded class size, Mr. Levenson is responsible for any rental costs above and beyond what it would have cost him to rent a compact car for those two days. DOI has calculated the cost differential – $62.73 – by reference to a receipt from

another DOI employee who rented a compact car at the same meeting in Jacksonville that Mr. Levenson attended.

We find for the agency. DOI's written policy is very clear: a traveler *must* rent a compact car unless the approving official has granted a request for authority to rent an upgraded vehicle class for one of the reasons specified in DOI's travel policy. Mr. Levenson asserts that he should be allowed to rent a larger vehicle based upon the physical size exception to the compact car rule and, further, that his supervisor actually approved his intermediate-size vehicle rental request. Yet, there is nothing in the record before us showing that Mr. Levenson ever made an upgrade request, and, although his pre-travel authorization includes a car rental in a dollar amount up to $168.51 (the amount of Mr. Levenson's intermediate-size vehicle rental), there is nothing that we can find in the travel authorization that would have notified Mr. Levenson's approving official that the $168.51 amount was for a vehicle size other than a compact car. There is no written justification in or on the travel authorization itself for a vehicle upgrade. Accordingly, we cannot find that Mr. Levenson's supervisor knowingly exercised her discretion to approve a request for an intermediate-size car. Further, even if the supervisor was so aware, there is nothing in the record establishing that the supervisor approved the upgrade for one of the permissible reasons identified in DOI's travel policy. As a result, the agency is entitled to recoup the cost difference between a compact car and an intermediate-size vehicle.

(3) Valet Parking: $10

The hotel at which Mr. Levenson stayed in Jacksonville allowed guests to self-park their cars for $15 a night, but offered valet parking for $20 a night. Although DOI's written travel policy provides that a traveler may be authorized reimbursement of parking fees incurred while on TDY travel, DOI Travel Policy ¶ 4.1.1, "[t]ravelers must obtain *pre-authorization*" for "[v]alet parking fees (only allowable when valet service is the only parking available or is necessary to accommodate an employee's documented special need or disability)." *Id.* ¶ 5.1 (emphasis in original). Mr. Levenson did not obtain pre-authorization for valet parking, and he does not contend that valet parking was the only parking option or that he had documented special needs. He asserts only that he used valet parking "because it was convenient and took less time." Although he was free to use valet parking, he cannot seek reimbursement from DOI for any increased costs that resulted from using it. Even if, as Mr. Levenson asserts, he has traveled in the past with senior governmental staff who have used valet parking at various meetings as a matter of convenience, that fact provides no basis for him to demand that DOI affirmatively provide after-the-fact authorization for such reimbursement here. *See Paul S. Hackett*, CBCA 2619-TRAV, 12-1 BCA ¶ 35,009, at 172,044 (because agency's authority is limited by

regulation, other employees' past reimbursement for certain travel costs does not create authority for agency to compensate claimant for similar costs).

(4) Lodging Cost Overage: $11

On February 17, 2015, the hotel in Wilmington, North Carolina, at which Mr. Levenson stayed charged him a pre-tax amount of $105 for his single-night stay. The applicable maximum lodging per diem for Wilmington at that time was $94 per night. *See www.gsa.gov/portal/getMediaData?mediaId=195303*. BSEE seeks to recover the $11 for which it previously reimbursed Mr. Levenson in excess of the applicable per diem.

"As a general rule, reimbursement for lodging and meal costs incurred by Government employees while traveling on official business is paid through a 'per diem allowance.'" *Harry Nadal*, GSBCA 15416-TRAV, 01-2 BCA ¶ 31,451, at 155,316 (quoting 5 U.S.C. § 5702(a)(1)(A) (1994)). "[T]he methods of reimbursement of per diem expenses include the lodgings-plus per diem method and the actual expense per diem method." *Id.* (citing 41 CFR 301-11.5 (2000)). Under the lodgings-plus method, which the agency approved here, "the actual lodging cost, not to exceed the maximum rate established for the [TDY] location, will be reimbursed," while, under the actual expenses method, the employee "may be reimbursed the full actual cost of lodgings limited to a ceiling of 300% of the applicable maximum per diem rate, or such lesser percentage as the agency may authorize." *Id.* (citing 41 CFR 301-11.303 (2000)).

Under the FTR, an agency is entitled to authorize actual expense reimbursement for lodging above the applicable lodging per diem in various circumstances, including when "[l]odging and/or meals are procured at a prearranged place such as a hotel where a meeting, conference or training session is held," when "mission requirements" warrant it, or for "[a]ny other reason approved within your agency." 41 CFR 301-11.300 (2015). Mr. Levenson asserts that he stayed at the same contracted hotel where the public meeting that he was attending was being held and that the entire BOEM team attending the meeting also stayed at that hotel at what he believes was the same rate that he was charged. He believes it unfair that other BOEM employees were apparently authorized reimbursement of the $105 lodging cost when he was not.

It would appear that, normally, Mr. Levenson's actual expense request falls within the portion of the FTR permitting an actual expense lodging reimbursement covering the cost of the hotel where the meeting that Mr. Levenson was attending was being held. *See* 41 CFR 301-11.300(a). The problem with Mr. Levenson's position is that he did not seek the higher lodging cost in his pre-travel authorization request. Although DOI travel officials can give pre-travel approval of actual expense reimbursement for lodging costs in excess of the GSA

per diem, *see* 41 CFR 301-11.302 ("Request for authorization for reimbursement under actual expense should be made in advance of travel."), DOI's particular travel policy does not permit them to do so after travel is completed: "If lodging costs exceed the per diem rate for the pre-authorized TDY location and the traveler did not obtained [sic] pre-travel approval to use the Actual Expense method of reimbursement, the difference is not a reimbursable expense; therefore, the traveler must assume the cost and pay for the difference with personal funds." DOI Travel Policy ¶ 2.2.1.

The FTR provides that, "subject to your agency's policy, after the fact approvals may be granted when supported by an explanation acceptable to your agency." 41 CFR 301-11.302. DOI's strict policy barring after-the-fact approvals may be harsh, but it is not inconsistent with the FTR provision,[7] which defers to individual agencies' policies about after-the-fact approvals, and, therefore, is enforceable. Accordingly, DOI is entitled to recoup the $11 that Mr. Levenson was paid in excess of the maximum lodging per diem.

(5) Seat Assignment Fee: $55

On February 20, 2015, when Mr. Levenson was preparing to depart Jacksonville at the end of his TDY travel to return to Boston, severe weather, including an impending snow storm, was impacting travel in the Northeast corridor. Previous travel had already been delayed and/or rescheduled during Mr. Levenson's trip because of bad weather, and the agency acknowledges that, if Mr. Levenson had not made his scheduled flight to Boston, he was facing the likelihood of an extended stay in Jacksonville.

The government travel reservation system had not assigned Mr. Levenson a seat on his Jacksonville-to-Boston flight, and, when he was checking in on-line, the only available seats were "extra space" seats with extra leg room, available for an upgrade purchase price of $55. Concerned that he could be bumped from the flight without a seat assignment, he paid the $55 charge. The agency seeks to recover its prior reimbursement of this charge from Mr. Levenson, asserting that Mr. Levenson could have waited to get a seat assignment at the gate at flight time, at which point he would have been assigned a seat (possibly including a remaining seat that might typically be sold at a premium) at no additional charge. Agencies "will not pay for excess costs resulting from . . . luxury accommodations or services unnecessary or unjustified in the performance of official business," 41 CFR 301-2.4, but only cover "transportation expenses" that are necessarily incurred on such business. *Id.* 301-10.1.

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[7] We do not consider here whether DOI's strict policy would be acceptable in a true emergency situation that the traveler could not reasonably have been expected to anticipate when submitting the travel authorization request.

The agency further asserts that the airline in question, Jet Blue, does not overbook flights, meaning that Mr. Levenson was not at any risk of not being able to board the flight.

Although we might ordinarily be sympathetic to Mr. Levenson's dilemma in having to make quick decisions in response to unexpected contingencies during official travel, *see Raymond S. Bednarcik Jr.*, CBCA 3859-TRAV, 15-1 BCA ¶ 35,836, at 175,256 (2014) (ordering reimbursement of travel costs incurred during course of official travel "in order to avoid getting trapped in the snowstorm"), our ability to order compensation for Mr. Levenson's stated effort to avoid delays in his return travel is hampered by the fact that he was traveling to his residence near Boston rather than to his PDS. As previously discussed, unless an employee has been properly authorized (with an "officially necessary" determination) for return travel to his second home rather than to his PDS, any costs that he or she incurs traveling to that alternate location "which would have been unnecessary" if he or she had been returning directly to the PDS are viewed as "in the nature of a personal expense, . . . not officially necessary, and not properly chargeable to the Government." *Henry Neimann*, 25 Comp. Dec. at 163. Travel reimbursement is limited to the constructive cost of return travel to the PDS. *Robert O. Jacob*, 07-1 BCA at 166,110; 41 CFR 301-10.8. Because there is no evidence in this record suggesting that Mr. Levenson would have to have incurred additional weather-related fees had he been returning to his PDS rather than Boston, he cannot recover the $55 fee at issue here. *See Stephen L. Crawford*, CBCA 4669-TRAV, 15-1 BCA ¶ 36,064, at 176,115 ("Although claimants may have acted prudently under the circumstances they encountered . . . , they were traveling on their own time, and they are not entitled to reimbursement of their additional travel expenses."); *Phillip V. Otto*, GSBCA 16192-TRAV, 04-1 BCA ¶ 32,429, at 160,486 (2003) (where employee "would not have been in the predicament of having the trip further delayed by the storm" had he not modified travel for personal reasons, the employee "must bear the financial consequences").

(6) Taxi Fees: $298.45

Mr. Levenson took a forty-two-mile taxi ride from his residence in Plymouth, Massachusetts, to the airport in Boston when departing for Wilmington, and he took a similar taxi ride back to his residence when he returned from Jacksonville. He asserts that he took the taxi rides, rather than driving and self-parking at the Boston airport, because of concerns about severe weather that might affect his drive. The total cost of these two taxi rides was $350. The agency asserts that Mr. Levenson should have recovered, at most, $51.55, which is what it estimates he would have been owed in mileage reimbursements and on-site airport parking fees had he driven to BWI airport from his residence in Maryland (near his PDS). It seeks reimbursement of the $298.45 amount that it claims it overpaid.

Under the FTR, "[w]hen authorized and approved by [an] agency, [an employee's] transportation expenses in the performance of official travel are reimbursable for the usual fare plus tip for use of a taxi, shuttle services or other courtesy transportation (if charges result)" from the traveler's "residence or other authorized point of departure" to the airport and back. 41 CFR 301-10.420(a)(1)(i)-(ii). The agency does not challenge the fact that Mr. Levenson actually incurred the taxi costs claimed to travel from his family residence to the airport. Its only challenge to reimbursement is that, because Mr. Levenson departed from and returned to a location other than his PDS locale, he must absorb any and all increased costs as a result of that action. For the same reasons that Mr. Levenson cannot recover the costs of his seat upgrade, he cannot recover increased taxi costs incurred because of weather in Boston. The agency has properly limited his recovery to the constructive costs of what he would have incurred for transport to and from his residence and the airport had he traveled from his PDS area. 41 CFR 301-10.8.

(7) Fees for Using DOI's Concur System: $75.46

Pursuant to the FTR, absent an exception granted by the head of the agency, "it is mandatory that an employee make arrangements for official travel through either the E-Gov Travel Service (ETS) or through the agency's existing [travel management service]." *Nicholas Kozauer*, CBCA 2525-TRAV, 12-1 BCA ¶ 34,912, at 171,654 (2011); *see* 41 CFR 301-50.3. DOI's written travel policy takes that provision a step further and provides not only that "DOI employees are required to use ETS for official TDY travel," but also that "[a]ny traveler who books transportation, lodging, or rental cars outside of the authorized ETS system will not be reimbursed any additional costs resulting from these actions." DOI Travel Policy ¶ 1.2.1. Mr. Levenson, as required, utilized the agency's Concur travel system to book and make changes to his travel. *See* Agency Response at 1 ("Employees are required to use Concur to make all travel arrangements and process their travel authorizations and claims for reimbursement (vouchers).").

The agency apparently incurs a charge every time that an employee makes a travel reservation or a change to a travel reservation through Concur, and those charges are billed to the agency and paid through a government account. DOI complains that Mr. Levenson made too many changes through Concur and accessed Concur too many times, causing the agency to incur excess Concur fees. It seeks to recover $75.46, which it identifies as the Concur fees arising from Mr. Levenson's attempts to change flights for the Boston portion of his travel, although it provides no documentary evidence in support of that request. Because any fees associated with attempts to change his Boston flight are allegedly "personal charges," DOI asks us to require Mr. Levenson to reimburse the agency for those fees.

DOI cites no precedent for its request that Mr. Levenson pay these fees personally, and we can see no basis for DOI's request. As an initial matter, we lack authority to assess these fees against Mr. Levenson. As previously discussed, pursuant to statute and our delegation of authority from the Administrator of General Services, we have authority to "settle claims involving expenses *incurred by* Federal civilian employees for official travel and transportation." 31 U.S.C. § 3702(a)(3) (emphasis added). As we understand it, it is the agency, not the employee, that is responsible for payment of the Concur fees, and BSEE has identified nothing in DOI's contract with the vendor running Concur or in the terms of DOI's employment agreements that would entitle the vendor to collect fees directly from federal employees. Those fees are not "expenses incurred by Federal civilian employees," but fees that are charged to the agency and for which the agency is responsible. *See Black's Law Dictionary* 885 (10th ed. 2014) (defining "incur" as ""[t]o suffer or bring on oneself (a liability or expense)"). We lack authority to shift responsibility for these charges from DOI to Mr. Levenson.

Further, even if we could shift responsibility, we would not do so. It is DOI that decided to use an electronic travel system that charges a fee each time that an employee accesses it; it is the Government that negotiated the amount of that fee; and it is the Government that requires employees to use that travel system to the exclusion of any other method of travel reservation. There is nothing that we can find in DOI's written travel policy or the FTR that limits the number of times an employee can access Concur or make reservation changes for a trip. In such circumstances, we can see no basis for shifting responsibility for the agency's fees to the traveler.

## Decision

For the foregoing reasons, we grant Mr. Levenson's challenge to DOI's request that he reimburse the agency for Concur fees totaling $75.46. We otherwise deny Mr. Levenson's claim.

HAROLD D. LESTER, JR.
Board Judge