



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 28, 2017

CBCA 5574-TRAV

In the Matter of DOUGLAS W. MORRIS

Douglas W. Morris, Washington, DC, Claimant.

Teresa L. Weaver, Finance Officer, Bureau of Safety and Environmental Enforcement, Department of the Interior, Washington, DC, appearing for Department of the Interior.

SHERIDAN, Board Judge.

Claimant, Douglas W. Morris, a civilian employee of the Department of the Interior (agency), contests the validity of the agency's demand that he repay \$316 in reimbursements for actual expenses incurred while he was on temporary duty travel (TDY). The agency states that claimant must repay the agency because he did not follow proper internal agency procedure for approval of actual expenses.

Background

Claimant, whose official duty station is Washington, D.C., was issued TDY orders to visit a remote monitoring facility and attend multiple industry meetings in Houston, Texas, from January 19 to January 21, 2016. Claimant's travel authorization was created on January 13, 2016, and was approved by his approving official (AO) that same day.

The maximum lodging rate approved by the General Services Administration (GSA) for Houston during claimant's stay was \$131 per night. Claimant's travel authorization allowed him an actual expense allowance. Pursuant to this authorization, claimant reserved a hotel in Houston at \$289 per night. In a statement to the Board, claimant explained his justification for exceeding the GSA-approved lodging rate. Claimant needed to stay at the

particular hotel so as to closely align travel arrangements with those of another agency employee to ensure they would be able to successfully complete a “very tight travel and meeting schedule in Houston.” The schedule included an 8:00 a.m. speech at the hotel followed by multiple industry meetings and a visit to a remote monitoring facility in Houston. In addition, early the next morning, claimant had a meeting across the street from the hotel.

On March 1, 2016, the agency’s audit department received claimant’s travel voucher and after auditing it, returned the voucher for adjustments. The department claimed discrepancies between the charges appearing on claimant’s Government-issued card, a missing receipt, and a phone call made from the hotel. The department also explained that claimant had failed to adhere to the agency’s written TDY policy for lodging exceeding the GSA-approved lodging rate by not submitting required documentation to show that claimant compared three lodging establishments prior to traveling and that either the lodging selected was the lowest cost, or claimant presented a full justification substantiating the selection made.

On August 18, 2016, claimant resubmitted his travel voucher to the audit department, which determined that he had satisfied all discrepancies except for the required documentation showing a cost comparison of three lodging establishments. Consequently, the agency demanded that claimant pay the difference between claimant’s actual lodging costs and the GSA-approved per diem lodging rate, a total of \$316. Claimant timely filed a claim with the Board.

The agency submitted a response to the claim. In support of its demand for repayment, the agency stated that the Federal Travel Regulation (FTR) requires that a request for authorization for reimbursement under the actual expense method be made in advance of travel. In addition, referencing Executive Order (EO) 13589, which requires that agencies minimize travel costs, and the Office of Management and Budget (OMB) implementing memorandum M-12-12, agency policy states:

The approving official may authorize the Actual Expense method of reimbursement when a traveler is unable to obtain meals or lodging within the prescribed rate. Prior to the trip, the traveler must provide the approving official a justification for claiming meals or lodging that are not available within the prescribed rates and include this justification with the travel authorization and voucher.

....

When submitting justification for actual expense reimbursement, travelers must document that at least three lodging establishments were researched. The traveler must include the documented research to support the requested actual expense reimbursement with the travel authorization. A traveler's lodging preference is not an acceptable reason to authorize actual expense reimbursement.

The agency agreed that claimant's requested actual expense was approved by his AO prior to travel in accordance with the FTR, but contests the approval on the basis that it was not made in accordance with agency policy.

Discussion

An employee traveling on official business may be reimbursed either by a GSA-approved per diem allowance or for actual and necessary costs of official travel. 5 U.S.C. § 5702 (2012). The Federal Travel Regulation (FTR), promulgated by the Administrator of General Services pursuant to 5 U.S.C. § 5707, provides that an employee may be reimbursed for actual TDY lodging expenses up to 300% of the government rate. 41 CFR 301-11.30(a), -11.303 (2015). Furthermore, the FTR states that "[a]pproval of actual expenses is usually in advance of travel and at the discretion of [the] agency." *Id.* 301-11.30(b). The FTR addresses several instances when actual expenses may be warranted, including where:

- (a) Lodging and/or meals are procured at a prearranged place such as a hotel where a meeting, conference or training session is held;
- (b) Costs have escalated because of special events (e.g., missile launching periods, sporting events, World's Fair, conventions, natural or manmade disasters); lodging and meal expenses within prescribed allowances cannot be obtained nearby; and costs to commute to/from the nearby location consume most or all of the savings achieved from occupying less expensive lodging;
- (c) The TDY location is subject to a Presidentially-Declared Disaster and your agency has issued a blanket actual expense authorization for the location (see § 301-70.201);
- (d) Because of mission requirements; or
- (e) Any other reason approved within your agency.

Id. 301-11.300. Essentially mirroring the FTR, DOI's TDY policy provides guidance on situations in which an employee may be authorized actual expense reimbursement. See <https://www.doi.gov/sites/doi.gov/files/migrated/pfm/fmm/upload/DOI-TDY-Travel-Policy.pdf>. However, the policy adds additional requirements not found in the FTR: "When submitting justification for actual expense reimbursement, travelers must document that at least three lodging establishments were researched." *Id.* The policy also provides: "The approving official must validate the traveler's research prior to authorizing actual expense reimbursement." *Id.*

Claimant's TDY orders authorizing him to be reimbursed for his actual lodging expense instead of the GSA-approved lodging rate were approved by his AO, apparently without the research on at least three lodging establishments being conducted or validated. Claimant's nightly rate for lodging, \$289, was well within 300% of the maximum GSA-approved rate of \$131 per night, and was therefore within an amount allowed by the FTR.

In this matter, the agency is seeking to retroactively amend claimant's approved travel authorization in order to reduce his reimbursement for actual expenses to the lesser GSA-approved rate after the TDY was performed. As a general rule, once travel is authorized, the employee's right to reimbursement of travel costs vests as the travel is performed, and "valid travel orders cannot be revoked or modified retroactively, after the travel is completed, to decrease rights that have already become fixed." *Renee Cobb*, CBCA 5020-TRAV, 16-1 BCA ¶ 36,240, at 176,819; see *Tomila K. Hearon*, CBCA 3995-TRAV, 15-1 BCA ¶ 35,904, at 174,512 (2014) ("As a general rule, TDY orders shall not be retroactively changed to increase or reduce an employee's reimbursable expenses."); *Nidavan Kanasawadse*, GSBCA 16508-TRAV, 05-1 BCA ¶ 32,913, at 163,044. The rule applies unless there was an error on the face of the orders or the orders were clearly in conflict with a law, regulation, or agency instruction. *Jeffrey E. Koontz*, CBCA 3251-TRAV, 13 BCA ¶ 35,318, at 173,372; *Jack J. Pagano*, CBCA 1838-TRAV, 10-1 BCA ¶ 34,408, at 169,877. "[W]hen all or part of the particular order involves an exercise of discretionary factors by the authorizing official, the order will be presumed correct in the absence of clear evidence of misapplication of those factors." *Pagano*, 10-1 BCA at 169,877.

Here, claimant's TDY orders were not erroneous on their face or issued contrary to law or regulation. Claimant's AO approved his travel authorization for actual expense reimbursement and was apparently satisfied as to claimant's need to stay at a hotel that exceeded the GSA-approved maximum lodging rate. While the claimant has failed to demonstrate that lodging was not available within the prescribed rate, and the AO could have refused to approve the actual expense authorization, the record reflects that claimant's circumstances were such that his stay, at a hotel where the nightly rate exceeded the GSA-

approved rate, was not contrary to law or regulation. *See* 41 CFR 301-11.300. Further, the orders were not modified or rescinded prior to claimant's travel.

The agency maintains that, although claimant's TDY orders were authorized, claimant nevertheless violated agency travel policy by failing to submit documentation showing that at least three different lodging establishments were researched. The agency has failed to articulate how claimant's purported violation of agency policy in any way impacted the AO's decision to approve actual expense TDY, and we are at a loss to understand why, under the circumstances presented here, researching three different lodging establishments was warranted. Here, claimant requested approval of his actual expenses to stay in a particular hotel, costing more than the GSA-approved maximum lodging rate, to align travel arrangements with another employee so that they would be able to successfully complete a "very tight travel and meeting schedule in Houston." The claimant's AO agreed with the request and issued the travel orders authorizing actual expense reimbursement. Any fault the auditor may have believed occurred in the approval process lies equally with the AO. At this stage, however, where travel orders were issued within law and regulation, and claimant has conducted and paid for the lodging consistent with the travel orders, the agency is without recourse to change the travel orders. Validly issued travel orders cannot be retroactively amended by the agency.

Decision

The claimant is entitled to the \$316 in reimbursements for actual expenses.

PATRICIA J. SHERIDAN
Board Judge