



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 28, 2017

CBCA 5586-TRAV

In the Matter of ISSY CHESKES

Issy Cheskes, Atlanta, GA, Claimant.

Jeremy K. Fisher, Office of the Solicitor, Department of Labor, Atlanta, GA, appearing for Department of Labor.

SULLIVAN, Board Judge.

Claimant, Issy Cheskes, appeals the denial of his claim for reimbursement of mileage costs at a higher rate than set forth on his travel authorization. Although Mr. Cheskes' travel authorization stated that he would be reimbursed at the rate of \$0.19 per mile, Mr. Cheskes seeks reimbursement at the rate of \$0.54 per mile because a Government-owned vehicle (GOV), which was available for him to use at the time his authorization was issued, became unavailable during the period of time that he was traveling. We deny the claim.

Background

Mr. Cheskes is a senior investigator in the Atlanta regional office of the Employee Benefits Security Administration, Department of Labor. On October 19, 2016, Mr. Cheskes requested authorization for business travel using his personally owned vehicle (POV) from November 14 through November 18, 2016, from Atlanta, Georgia, to Brightwood, North Carolina, a distance of 800 miles. At the time Mr. Cheskes obtained his travel authorization, the GOV for his office was available for his use. Because the GOV was available, Mr. Cheskes' travel authorization indicated that he would be reimbursed at a rate of \$0.19 per mile. Mr. Cheskes does not explain why he sought approval to travel using his POV, but he does explain that, prior to seeking authorization, he determined that using his POV at the lower mileage reimbursement rate would cost the Government less than if he rented a car.

Upon his return from travel, Mr. Cheskes learned that another investigator in his office had used the GOV for the office during the time he was on travel. With this information, Mr. Cheskes submitted his request for reimbursement at the higher rate of \$0.54 per mile. The regional director of Mr. Cheskes' office denied the request for reimbursement, noting that the mileage rate was greater than the rate set forth on his travel authorization. The regional director also asked that he perform a new cost comparison between the cost of a rental car and the cost of his POV.

In its response to the claim, the agency provided a copy of its policy governing the use of the GOV by the members of Mr. Cheskes' office. That policy requires, in part, that travelers check the reservation calendar for the GOV the Thursday afternoon prior to their travel to determine whether the GOV is available. Mr. Cheskes did not check this calendar prior to his trip.

Discussion

At what rate is the agency obligated to reimburse Mr. Cheskes for his travel on official business using his POV? Employees who choose to use a POV instead of a GOV may only be reimbursed at the GOV rate:

[I]n any case in which an employee who is engaged on official business for the Government chooses to use a privately owned vehicle in lieu of a Government vehicle, payment on a mileage basis is limited to the cost of travel by a Government vehicle.

5 U.S.C. § 5704(c) (2012); *see* 41 CFR 301-10.310 (2016). The Federal Travel Regulation (FTR) further contains presumptions regarding the most advantageous method of transportation and directs that "POVs should be determined to be the most advantageous method of transportation only after your agency evaluates the use of a common carrier, a Government-furnished automobile, and a rental car." 41 CFR 301-10.5(d). At the time that Mr. Cheskes sought authorization to travel, the GOV for his office was available for his use. Mr. Cheskes' travel authorization properly stated that he would be reimbursed at the lower GOV rate.

Mr. Cheskes asserts that he is entitled to receive reimbursement at the higher rate because the GOV for his office was not available during his trip. Mr. Cheskes relies upon the provision of the Federal Travel Regulation (FTR) that requires him to be reimbursed the "applicable mileage rate" for a POV when use of the POV is determined to be most advantageous to the Government. 41 CFR 301-10.303. However, Mr. Cheskes' use of his POV was determined not to be most advantageous to the Government; the most

advantageous means of his travel was using an available GOV, with reimbursement at the lower mileage rate. This determination was set forth in his travel authorization.

Mr. Cheskes asserts that he could not have used the GOV for his office because it was being used at the time of his travel and the circumstances at the time of his travel should control. Mr. Cheskes cites *Andre E. Long*, GSBCA 14498-TRAV, 98-1 BCA ¶ 29,731, as support for his contention. In fact, that decision states that it is the travel authorization that controls the determination of reimbursements to which an employee is entitled:

The travel order establishes the conditions, in writing, under which official travel and transportation are authorized at Government expense. . . . The written travel order assists in fund control and meeting the requirements of recording obligations at the time they are incurred. Moreover, the order provides a notice and record of the employee's instructions and entitlements. *Lewis J. Kraft*, B-198937 (Apr. 15, 1981); *Robert Gray*, B-203820 (Oct. 19, 1981). Consequently, legal rights and liabilities in regard to travel allowances vest as and when travel is performed under a competent order, generally, the order may not be revoked or modified retroactively so as to increase or decrease the rights and benefits that have become fixed under applicable statutes and regulations. *Dana Riser*, GSBCA 14017-RELO, 98-1 BCA ¶ 29,417; *Donald R. Del Balzo*, B-253504 (Feb. 14, 1994).

Id. at 147,387. Pursuant to this precedent, it is Mr. Cheskes' travel authorization that controls the rate at which he may reimbursed. It is undisputed that the GOV was available at the time Mr. Cheskes was authorized to travel, so the authorization correctly stated that Mr. Cheskes would be reimbursed \$0.19 per mile for travel. The vehicle became unavailable because another investigator used the vehicle during Mr. Cheskes' period of travel. It is not known when it became unavailable because Mr. Cheskes did not follow the policy of his office and check on the availability of the GOV prior to undertaking his travel. Mr. Cheskes also did not seek to change the reimbursement rate prior to his travel based upon the unavailability of the GOV. The travel authorization controls the reimbursement rate to which Mr. Cheskes is entitled.

Decision

The claim is denied. The agency need only reimburse Mr. Cheskes at the rate of \$0.19 per mile.

MARIAN E. SULLIVAN
Board Judge