



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 3, 2018

CBCA 5988-TRAV

In the Matter of CALEB B. HALSTEAD

Caleb B. Halstead, RAF Menwith Hill, UK, Claimant.

Cynthia Bennett, Chief, Business Management and Acquisition, National Security Agency, Fort George G. Meade, MD, appearing for Department of Defense.

HYATT, Board Judge.

Claimant, Calvin B. Halstead, is a civilian senior legal adviser employed by the Department of the Air Force and stationed at Royal Air Force Menwith Hill in North Yorkshire, United Kingdom. The station is jointly run by the United States Air Force and the National Security Agency (NSA). Mr. Halstead challenges NSA's disallowance of his claim for per diem in connection with travel he performed, under temporary duty (TDY) orders, to attend a hearing in West Yorkshire. For the reasons stated, we deny the claim.

Background

Mr. Halstead was assigned to attend a hearing in support of an NSA employee who was being tried in the Leeds Crown Court, in downtown Leeds, West Yorkshire. This location is approximately twenty miles distant from Mr. Halstead's official duty station in North Yorkshire. The hearing took place from August 14-17, 2017, and, at Mr. Halstead's request, official TDY travel orders were issued on August 10, 2017, providing for reimbursement of costs associated with the assignment, including lodging if receipts were provided.

Mr. Halstead traveled by train to and from Leeds each day to attend the hearing. For the first three days, his travel voucher shows the trips commencing at 8:00 a.m. and ending

at 5:00 p.m.; on the final day of the hearing, the trip to and from Leeds started at 8:00 a.m. and ended at 4:00 p.m. Including travel, the time required to perform the assignment totaled thirty-one hours. Upon completion of the hearing, Mr. Halstead submitted a travel voucher seeking reimbursement of train fare and per diem expenses for the four-day period. NSA authorized reimbursement of the transportation expenses, but denied the claim for per diem expenses, reasoning that per diem cannot be paid within the local commuting area. Mr. Halstead challenges the agency's denial of his claim for per diem for the travel days in issue.

Discussion

The issue before the Board is whether Mr. Halstead is eligible for a per diem allowance while performing official travel approximately twenty miles distant from his official duty station. By statute, a per diem allowance may be authorized for government employees "when traveling on official business away from the employee's designated post of duty, or away from the employee's home or regular place of business. 5 U.S.C. § 5702(a)(1) (2012). The Federal Travel Regulation (FTR), which implements this provision, states that a per diem allowance may be paid when the employee "(a) . . . perform[s] official travel away from [the] official station, or other areas defined by [the] agency; (b) . . . incur[s] per diem expenses while performing official travel; and (c) . . . [is] in a travel status for more than 12 hours." 41 CFR 301-11.1 (2016) (FTR 301-11.1).

The FTR further defines the term "official station" as follows:

An area defined by the agency that includes the location where the employee regularly performs his or her duties The area may be a mileage radius around a particular point, a geographic boundary, or any other definite domain, provided no part of the area is more than 50 miles from where the employee regularly performs his or her duties.

Id. 300-3.1. In the Joint Travel Regulations (JTR), the Department of Defense (DoD) has provided that the local area within which travelers are eligible for reimbursement of expenses shall be established in a written directive issued by the individual base or installation. In addition, the JTR offers guidance to the effect that:

The "local area" is defined as the area within the PDS [permanent duty station] limits and the metropolitan area around the PDS served by the local public transit systems; the local commuting area as determined by the AO [authorizing official] or local Service or DoD Agency; and the separate cities, towns, or installations among which the public commutes on a daily basis. An arbitrary distance radius must not be defined for the local commuting area.

JTR 0206. With respect to TDY performed within the PDS local area but outside the PDS limits, “[a] . . . civilian employee who requires overnight lodging in the PDS area to perform a TDY in the vicinity of, but outside the PDS limits[,] may be eligible for travel allowances.” JTR 020601-A. The JTR further states that the AO may authorize per diem if “the travel period is more than 12 consecutive hours and overnight lodging is required” and that per diem is “not authorized for a TDY performed outside the PDS limits even if it is in the vicinity of the PDS, unless overnight lodging is required.” JTR 020601-B(2).

These provisions of the FTR and JTR embody the well-established rule that, without specific authority of law, the Government may not pay per diem, in addition to regular compensation, to an employee working at his or her official duty station. *Louis M. Berra*, GSBCA 14134-TRAV, 98-1 BCA ¶ 29,401 (1997). The record does not contain a written directive establishing the local commuting area for Menwith Hill, but in the absence of such a directive, NSA can be said to have reasonably concluded that Leeds was in the local commuting area of the PDS. *See Gerald A. Sherman*, GSBCA 13791-TRAV, 97-2 BCA ¶ 29,299. NSA’s rationale is consistent with JTR guidance and is further supported by the fact that Mr. Halstead was readily able to travel to and from Leeds within the time period of a normal work day.

Although Mr. Halstead maintains that his travel status should be viewed as lasting for a cumulative period of thirty-one hours over the four days of the trial, thus entitling him to payment of a per diem allowance for meals, this interpretation of the applicable travel rules and regulations is simply erroneous and belies the reality of Mr. Halstead’s situation. In fact, Mr. Halstead began and ended his travel status each time he left and returned to his place of residence near the PDS. An employee on travel status is only eligible to receive an allowance when he travels more than twelve hours on any given day, even if the day of travel does not require lodging. *Jerry B. Dulworth*, GSBCA 16035-TRAV, et al., 03-2 BCA ¶ 32,312. There were no days where claimant was in travel status for more than twelve consecutive hours. Consequently, he was not entitled to payment of a per diem allowance.

The issuance of travel orders authorizing payment for overnight lodging and per diem does not change the analysis in these circumstances. Statute and implementing regulations make clear that there is no authority to authorize the payment of such expenses in these circumstances. As such, the travel orders were not valid for the purpose of creating an entitlement to per diem.

Finally, we note that Mr. Halstead contends that it was reasonable for him to request orders authorizing payment of a per diem allowance because he was attending formal courtroom hearings and, being unable to bring a lunch, was required to purchase that meal. Although the agency may not reimburse such costs as travel expenses, we do not speak to

whether there is any authority outside the FTR and JTR under which Mr. Halstead may recover these expenditures. *Leo McManus*, GSBCA 15548-TRAV, et al., 01-2 BCA ¶ 31,507; *Sherman*.

Decision

The claim is denied.

Catherine B. Hyatt
CATHERINE B. HYATT
Board Judge