



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 6, 2018

CBCA 5862-TRAV

In the Matter of FRANK A. BALISH

Frank A. Balish, Roaring Brook Township, PA, Claimant.

Connie J. Rabel, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

KULLBERG, Board Judge.

Claimant, Mr. Frank A. Balish, claims per diem for a rest period of one day after arriving at his temporary duty (TDY) location outside the continental United States (OCONUS) in Hawaii. The agency, the Department of the Army (Army), contends that Mr. Balish is not entitled to reimbursement for a rest period because more than twenty-four hours elapsed between when he arrived and when he reported for work at his TDY location. For the reasons stated below, this matter is remanded to the agency for a determination consistent with this decision.

Background

On September 19, 2016, the Army issued TDY orders for Mr. Balish to travel from his permanent duty station (PDS) at the Tobyhanna Army Depot (Tobyhanna), Pennsylvania, to the Barking Sands Naval Station, Kauai, Hawaii. Mr. Balish's orders provided for a TDY period of nine days, and a proceed date of October 1, 2016 (Saturday). Although Mr. Balish's request for travel orders included a request for a rest period the day after his

arrival, his travel orders were silent as to whether he was authorized a rest period following his arrival.

Mr. Balish departed Wilkes Barre, Pennsylvania, on Saturday, at 7:06 a.m., and he arrived at Lihue, Hawaii, at 7:14 p.m. His flight was roughly eighteen hours, and there was a six-hour time difference between his TDY location and his PDS. The itinerary for Mr. Balish's travel shows that his flights were arranged by a government travel agent, and he flew coach class. He reported for work at his TDY location on the morning of October 3 (Monday), at around 7:00 a.m.

After returning to his permanent duty station (PDS), Mr. Balish filed his TDY claim that included reimbursement for per diem for October 2, 2016 (Sunday), which was a rest period following his flight. The Army informed Mr. Balish that he was not entitled to per diem for Sunday because roughly thirty-six hours elapsed from his arrival on Saturday to when he reported for work at his TDY location on Monday, and travel regulations limited him to a rest period of no more than twenty-four hours. Instead, he was deemed to have been in a leave status on Sunday. Mr. Balish subsequently filed his claim with the Board.

Discussion

At issue in this matter is whether Mr. Balish is entitled to per diem for Sunday as a rest period because more than twenty-four hours elapsed between his arrival on Saturday and when he reported for work on Monday. The Federal Travel Regulation (FTR), which applies to Mr. Balish, states the following:

May my agency authorize a rest period for me while I am traveling?

- (a) Your agency may authorize a rest period not in excess of 24 hours at either an intermediate point or at your destination if:
 - (1) Either your origin or destination point is OCONUS;
 - (2) Your scheduled flight time, including stopovers, exceeds 14 hours;
 - (3) Travel is by a direct or usually traveled route; and
 - (4) Travel is by coach-class.

41 CFR 301-11.20 (2016) (FTR 301-11.20). The Joint Travel Regulations (JTR), which also apply to Mr. Balish, state the following:

Rest Period at the TDY Point before Reporting for Duty. A reasonable rest period at the TDY point (NTE [not to exceed] 24 hours) should be provided before the traveler reports for duty when:

1. The scheduled flight time (including stopovers and plane changes) exceeds 14 hours by a usually traveled route. Scheduled flight time is the time between the scheduled aircraft departure from the airport serving the PDS/TDY point and the scheduled aircraft arrival at the airport serving the TDY point/PDS (the flight(s) between two duty points), including scheduled non overnight time spent at airports during plane changes.
2. An en route rest stop is not authorized/approved;
3. The traveler is not authorized first/business accommodations; or
4. The traveler is required to travel overnight (2400-0600) (in which case arrival should be scheduled to provide an appropriate rest period (NTE 24 hours) at the TDY point before the traveler is required to perform official duties).

JTR 4415-D. Mr. Balish's travel to his TDY location met the above-referenced FTR and JTR requirements for a rest period. His travel was OCONUS, he did not have an en route rest stop, he traveled for more than fourteen hours by a direct route, and he did not travel first or business class.

The Army, however, contends that Mr. Balish's "request for reimbursement for the rest period on Sunday[,] October 2, 2016[,] was denied since the total rest period from the time of arrival at the TDY location and the actual beginning of the Official TDY was in excess of 24 hours and not in accordance with the regulations in effect at the time of travel." In *Kathleen Pinette*, 72 Comp. Gen. 3 (1992), the Comptroller General (CG), which previously decided travel and relocation claims, determined that it was reasonable for an agency to allow two of its employees rest periods of one day even though they arrived more than twenty-four hours before reporting for work at their TDY locations. *Id.* at 5-6. An arrival within twenty-four hours, however, would have required departures after midnight. *Id.* at 4. The CG held "that employees should not be required to begin travel after midnight in order to have them arrive early in the day before reporting for duty" or arrive "late at night . . . [without] a sufficient period of rest before reporting for work." *Id.* at 5-6. Under those circumstances, an agency may permit a rest period that is "within the limits of reason and not excessive." *Id.* at 6. The Board finds the CG's reasoning applicable to the travel regulations

now in effect as there is nothing in the FTR and JTR to suggest that a rest period must coincide precisely with a twenty-four hour period before an employee reports for work.

Mr. Balish's entitlement to a rest period should be based upon a standard of reasonableness as opposed to a rigid requirement that he arrive within twenty-four hours before reporting for work at his TDY location. It is, however, within an agency's discretion to allow such a rest period. *Patrick Mangan*, CBCA 1788-TRAV, 10-2 BCA ¶ 34,464, at 170,025. Although Mr. Balish's travel orders did not specifically provide for a rest period, this Board has recognized that an agency has the discretion to authorize such a rest period. *Id.* The Board, accordingly, remands this matter to the agency for a determination consistent with this decision.

H. CHUCK KULLBERG
Board Judge