



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 1, 2018

CBCA 6004-TRAV

In the Matter of LEE C. MOORES

Lee C. Moores, Vicksburg, MS, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

LESTER, Board Judge.

Claimant, Dr. Lee C. Moores, asks us to direct the United States Army Corps of Engineers (USACE) to reimburse him the full amount that he was charged for airport parking, which was necessitated by a direction from supervisory staff at USACE's Engineer Research and Development Center (ERDC) that he depart immediately from his official duty station in Vicksburg, Mississippi, for temporary duty (TDY) travel to a hurricane disaster area. The Finance Center for USACE, acting upon ERDC's behalf, originally asserted that Dr. Moores' reimbursement for airport parking should be limited to the amount that a local airport shuttle service would have charged to transport him to and from the airport, had it been available on such short notice, but USACE has since revised its position to allow parking reimbursement up to the amount that a commercial taxi service would have charged for round-trip transport. For the reasons set forth below, we grant Dr. Moores' claim, allowing reimbursement for the entirety of his airport parking fee.¹

¹ When Dr. Moores originally submitted his claim to the Board, he identified additional disputes involving travel costs associated with this trip. Dr. Moores subsequently informed us that only his airport parking fee claim remains in dispute, and we address only that dispute in this decision.

Background

In response to damage caused by Hurricane Maria, Dr. Moores was scheduled to deploy temporarily to San Juan, Puerto Rico, on Monday, October 9, 2017, as part of the Operation Blue Roof recovery effort, with an anticipated return date of November 5, 2017. At approximately 2 p.m. on Friday, October 6, 2017, Dr. Moores' agency management informed him that he would need to leave for Puerto Rico from his official duty station in Vicksburg immediately. Dr. Moores contacted the agency's travel agent to reschedule his flight from the nearest commercial airport, which is in Jackson, Mississippi, for a departure later that day. Unfortunately, the last flight of the day from Jackson that could connect to a flight to Puerto Rico had already departed. After those within Dr. Moores' office considered the matter that afternoon, it was decided that Dr. Moores would take the next available flight, which was scheduled to depart Jackson at 6:30 a.m. the next morning.

Although ERDC has no official policy limiting employees' transport options, ERDC normally directs employees departing on TDY travel to use a local airport shuttle service known as "Go-Fer Girls" for transport from Vicksburg to the airport in Jackson. Go-Fer Girls charges a flat fee of \$75 per person for each one-way shuttle trip between Vicksburg and Jackson, an amount significantly less than commercial taxi fares. Prior to October 6, 2017, Dr. Moores had made arrangements with Go-Fer Girls for his transport to the Jackson airport on October 9. When he was alerted on the afternoon of October 6 that he would need to leave for Puerto Rico immediately, rather than on October 9, Dr. Moores attempted to contact Go-Fer Girls, but the transport service was not responsive. Unable to identify any other reasonable means by which to get to the airport on such short notice,² Dr. Moores drove his personal vehicle to the airport and parked it there in the long-term parking lot in time to make his early morning October 7 flight, at a cost of \$10 a day (inclusive of taxes).

While deployed in Puerto Rico, the management of the disaster area asked that Dr. Moores' deployment be extended an additional ten days (through November 15, 2017).

² Beyond the Go-Fer Girls shuttle service, there are two taxi services in Vicksburg, both small privately-owned businesses. Although the record here is unclear as to whether Dr. Moores attempted to contact them on October 6 to inquire about transport to the Jackson airport, he has since done so in an effort to obtain information about pricing for such a trip. On every attempted contact, no one ever answered the phone, and voicemail was never available. Based upon the preponderance of evidence in the record, we find that these two taxi services were not available to transport Dr. Moores on short notice early on the morning of October 7.

When Dr. Moores returned to Mississippi on November 15, 2017, his total parking charges were \$400 (\$10 per day).

Upon review of Dr. Moores' travel reimbursement request, the agency notified Dr. Moores that he was entitled to reimbursement of only \$150 of his incurred parking fees, which represented the amount that it would have cost to get to and from the Jackson airport had Dr. Moores used the Go-Fer Girls airport shuttle service. His supervisor later indicated that, had he known about the transport problem, he would have worked out other arrangements for Dr. Moores' transport, even if that meant driving Dr. Moores from Vicksburg to Jackson himself. Nevertheless, no one made such an offer, or offered Dr. Moores any other assistance, when he was working to reschedule his travel for immediate departure on the afternoon of October 6.

After Dr. Moores submitted his claim to the Board, the Board, for reasons that will become clear below, asked USACE to address whether "Go-Fer Girls" constitutes a commercial taxi service or, instead, an airport shuttle service. The agency subsequently notified the Board that it had attempted to obtain information about the nature of Go-Fer Girls' services, but was ultimately unsuccessful in obtaining any such information. USACE also indicated that, using the on-line "Taxi Fare Finder" website that it uses for all other USACE districts, divisions, and installations when determining the amount that the agency can reimburse for airport parking, USACE had determined that a commercial taxi fare from Vicksburg to the Jackson airport should be approximately \$164.16 and that the return fare should be approximately \$161.16. Totaling those amounts, USACE indicated that it was willing to reimburse Dr. Moores \$326.15 for his airport parking, leaving Dr. Moores with an unreimbursed amount of \$73.85.

Discussion

The Federal Travel Regulation (FTR) provides that, if a traveler drives his or her privately owned vehicle to the airport when beginning official travel, reimbursement for parking at the airport is limited to the cost of two one-way taxi fares between the departure point and the airport:

§ 301-10.308 What will I be reimbursed if I park my POV at a common carrier terminal while I am away from my official station?

Your agency may reimburse your parking fee as an allowable transportation expense not to exceed the cost of taxi fare to/from the terminal.

41 CFR 301-10.308 (2017). Section 020213 of the version of the Joint Travel Regulations (JTR) in effect when Dr. Moores traveled implements that provision by stating that, if “a traveler parks at a terminal,” the traveler “may be reimbursed actual expense up to the cost of two one-way taxi fares.” The FTR expressly distinguishes between a commercial taxi and an airport shuttle service, *see* 41 CFR 301-10.420(a), the former being a for-hire means of motor vehicle transport to a requested destination that typically charges by meter based upon mileage and time and the latter typically involving shared ride transportation to a limited number of locations with multiple unaffiliated passengers at a pre-set cost lower than that of a taxi. *See Abel v. Southern Shuttle Services, Inc.*, 301 F. App’x 856, 859-60 (11th Cir. 2008) (distinguishing airport shuttle service from a commercial taxi service); *Wirtz v. Cincinnati, Newport & Covington Transportation Co.*, 375 F.2d 513, 514-15 (6th Cir. 1967) (same).

Pursuant to these FTR and JTR provisions, Dr. Moores is plainly entitled to reimbursement for at least the cost of two one-way taxi fares between Vicksburg and the Jackson airport, a distance of approximately fifty miles. *See* 41 CFR 301-10.308; JTR 020213. ERDC could not limit reimbursement to the amount of the round-trip shuttle service fare because an agency “cannot direct a traveler to travel at personal expense or at reimbursement rates or amounts inconsistent with the JTR,” JTR 010104-B, or, more importantly, inconsistent with the FTR. *See Michael P. Strand, CBCA 5776-TRAV*, slip op. at 4 (Feb. 23, 2018) (FTR trumps any inconsistencies in provisions of JTR). Particularly in the circumstances here, where the agency’s preferred means of transport was not reasonably available following the sudden and immediate shift in travel plans that the agency imposed, the agency was unreasonable in limiting Dr. Moores’ recovery of airport parking costs to the typical fee of the airport shuttle service.³

The agency has now acknowledged that it was wrong to limit Dr. Moores’ parking reimbursement to the round-trip airport shuttle service fare and has attempted to identify

³ It is conceivable that an agency can “restrict or place a monetary limit on the amount of reimbursement for the use of taxicabs” when, for example, “[s]uitable Government or common carrier transportation service, including shuttle service, is available for all or part of the distance involved.” 41 CFR 301-10.420(c)(1). Here, though, as the agency made clear in response to the Board’s inquiry, ERDC has never issued any kind of directive requiring its employees always to use Go-Fer Girls or another airport shuttle service in lieu of a commercial taxi service. Further, in the circumstances here, where the shuttle service was not reasonably available to accommodate the last-minute change in travel requirements that the agency imposed, ERDC could not have limited Dr. Moores’ reimbursement to the cost of the round-trip shuttle service even if it had such a policy.

what a commercial taxi service would have charged using a website called “Taxi Fare Finder.” Using that site, the agency contends that Dr. Moores is entitled to recover \$326.15 for parking, leaving him to cover the remaining \$73.85 in parking fees. We believe that, in the circumstances here, Dr. Moores is entitled to the entirety of the \$400 parking fee that he paid.

The FTR and JTR, in limiting reimbursement for departure airport parking to what round-trip commercial taxi fare would have cost, assume that commercial taxi service was reasonably available to the traveler. In the circumstances here, it was not. In light of ERDC’s sudden direction that Dr. Moores travel immediately, with the timing of his flight departure not settled until late in the day on Friday, October 6, Dr. Moores had little time (mostly after regular work hours) to arrange for early morning transport of fifty miles to the Jackson airport on October 7. The Go-Fer Girls shuttle service did not respond to his inquiries in the very short time frame available to him, and the record indicates that the only commercial taxi service in Vicksburg is not available twenty-four hours a day, does not provide for consistent telephone contact, and was not reasonably available in this situation. We have recognized that, when a claimant’s “travel plan changes were not made for personal reasons but because of an emergency situation wholly attributable to his official business and for the Government’s benefit,” the claimant should not be penalized so long as he “exercise[s] prudent care in changing his travel departure plans.” *Raymond S. Bednarcik Jr.*, CBCA 3859-TRAV, 15-1 BCA ¶ 35,836, at 175,255 (2014); see *Jeffrey M. Downing*, CBCA 5032-RELO, 16-1 BCA ¶ 36,221, at 176,711-12 (if a traveler faced with few options in “exigent circumstances that required him to move forward immediately” picked a solution “us[ing] the same standard of care . . . as would a prudent person traveling for personal business,” the agency’s goal should be to try to provide for reimbursement). Generally, in reviewing travel claims, an agency should endeavor to reimburse employees for costs that they reasonably incurred while on official travel for the Government, subject only to any specific prohibitions on such reimbursement. See *Stephanie A. Diehl*, CBCA 2764-TRAV, 12-2 BCA ¶ 35,077, at 175,275.

Here, application of the “Taxi Fare Finder” is not useful when, in reality, there was no practical way to obtain a taxi from Vicksburg to Jackson in the very short window of time that Dr. Moores was provided. In such circumstances, Dr. Moores’ decision to drive to the Jackson airport was inherently reasonable, and he should not be penalized for agency action that left him no other realistic alternatives.⁴

⁴ Even if Dr. Moores could have been expected to find some type of commercial transport service to Jackson in the short time frame provided to him, USACE’s proposed reimbursement for airport parking, limited to the estimated round-trip fare from “Taxi Fare

Decision

For the foregoing reasons, we grant Dr. Moores' claim.

HAROLD D. LESTER, JR.
Board Judge

Finder,” would be flawed. The agency does not include in its cost estimate the tip that the website suggests be added to the identified fare. Transportation expenses for official travel “are reimbursable for the usual fare *plus tip* for use of a taxi,” 41 CFR 301-10.420(a) (emphasis added), and “[t]erminal parking fees incurred while the employee is on TDY may be reimbursed [pursuant to FTR 301-10.308] not to exceed the cost of two one-way taxicab fares, *including allowable tips.*” *Sandy A. Aubertine*, GSBCA 16759-TRAV, 06-1 BCA ¶ 33,170, at 164,358 (2005) (emphasis added); *see Johnnie P. Saunders, Jr.*, GSBCA 16791-TRAV, 06-1 BCA ¶ 33,223, at 164,641 (reimbursement for airport parking is limited to taxi fare “plus an allowable tip”). USACE’s suggested reimbursement of \$326.15 does not account for the addition of reasonable tips for the driver(s).