



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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April 22, 2019

CBCA 6234-TRAV

In the Matter of DAVID M. VAN DORPE

David M. Van Dorpe, Upland, CA, Claimant.

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

**BEARDSLEY**, Board Judge.

Claimant, David Van Dorpe, seeks reimbursement for lodging fees in the amount of \$1064.64 incurred during a temporary duty (TDY) assignment.

Background

Claimant was employed by the United States Army Corps of Engineers (USACE), Los Angeles District during the time period under consideration. His TDY orders contemplated travel from December 11 through 14, 2017, from the employee's home in Upland, California, to the El Segundo, California, TDY location. The trip from claimant's home to the TDY location was 110 miles round trip, 24.8 miles beyond his 85.2 mile commute from his home to his permanent duty station (PDS) in Los Angeles, California.

Claimant's estimated commute time each day to and from his home to the TDY location was five hours and ten minutes. This estimated commute time combined with the time spent at the TDY location (eight hours for the training class) would have totaled more than thirteen hours of travel for each day. Due to the long travel time, USACE authorized lodging near the TDY location in advance of claimant's travel and confirmed the authorization after reimbursement was initially denied. The USACE Finance Center Audit Support Office later determined that claimant was not entitled to reimbursement and billed

him in the amount of \$1064.64 for the lodging costs. Claimant challenges USACE's denial of this reimbursement.

### Discussion

The issue before the Board is whether claimant is eligible for reimbursement of lodging expenses when traveling less than thirty miles from his PDS. USACE argues against reimbursement because the TDY location was within the local area of claimant's PDS. We disagree.

By statute, reimbursement of actual travel expenses or a per diem allowance may be authorized for government employees "when traveling on official business away from the employee's designated post of duty." 5 U.S.C. § 5702(a)(1) (2012). This provision is implemented through—in order of authority—the Federal Travel Regulation (FTR), the Joint Travel Regulations (JTR), and the Los Angeles District Travel Regulations (LADTR). *Michael P. Strand*, CBCA 5776-TRAV, 18-1 BCA ¶ 36,993, at 180,160 (holding that the JTR must "give way" to the FTR when there is a conflict (citing *Ronald D. Aylor*, CBCA 4752-TRAV, 15-1 BCA ¶ 36,028 at 175,984)); *Jesus R. Gonzalez*, CBCA 2777-TRAV, 12-2 BCA ¶ 35,137, at 172,493 ("[L]ocal manuals and guidance . . . cannot invalidate a regulatory or statutory requirement.").

The FTR states that an allowance must 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, -11.3 (2017) (FTR 301-11.1, -11.3); *see also* FTR 301-11.2. The FTR defines the term "official station" as "[a]n area defined by the agency that includes the location where the employee regularly performs his or her duties." FTR 300-3.1. The JTR defines the term "official station" as the employee's PDS. JTR app. A-OFFICIAL STATION. The JTR further sets the maximum geographic limit of a PDS as "the corporate limits of the city/town in which the . . . member/employee is stationed." JTR app. A-PERMANENT DUTY STATION (PDS) C.1.a; *see also Michael N. Heinz*, CBCA 2696-TRAV, 12-1 BCA ¶ 34,999, at 171,989 (finding that the PDS was the corporate limits of the city). Here, claimant's PDS or official station was the USACE building in Los Angeles, and the limit of claimant's PDS was the corporate city limits of Los Angeles. Thus, claimant performed official travel in El Segundo, away from his official station and outside of the PDS limits.

USACE argues that because the TDY location was within seventy-five miles of claimant's PDS, per diem reimbursement is not owed per the LADTR. The LADTR states that "[p]er diem [sic] shall not be allowed for travel periods less than 12 hours and less than 75 miles." LADTR app. K, K-3. The JTR, however, expressly provides that travelers may be entitled to reimbursement for per diem that is within the local area, if the travel is outside of the PDS limits and overnight lodging is required. JTR 020601-A, -B.2.b. The JTR further states that "an arbitrary distance radius must not be defined for the local commuting area." JTR 0206. The seventy-five-mile distance radius in the LADTR is arbitrary and, therefore, does not preclude reimbursement. Moreover, claimant traveled outside of the PDS limits and the travel period was more than twelve hours.

Overnight lodging was required because claimant would have been in a travel status for over twelve hours had claimant not stayed in a hotel near the TDY location. *See* JTR 020601-B.2. "Travel status" is defined in the JTR and includes both travel to the TDY location and the time spent at the TDY location. JTR 010203. When a traveler is commuting directly to a TDY location from his residence, travel status begins when the traveler leaves his home and ends when the traveler returns home. *Id.*; *see also Caleb B. Halstead*, CBCA 5988-TRAV, 18-1 BCA ¶ 37,154, at 180,861.

USACE further contends that the JTR prohibits per diem reimbursement for traveler expenses within the vicinity of the traveler's PDS. The JTR indicates that per diem is not authorized "[f]or a civilian employee who travels or has a TDY within the PDS limits or within the vicinity of or at the residence from which the commute takes place daily to the official station." JTR 020603-B.2, tbl. 2-27. USACE incorrectly relies on JTR provisions applicable to travel within the PDS limits or the vicinity of the traveler's home because claimant's travel was outside of the PDS limits and not in the vicinity of his home.

### Decision

Claimant is entitled to reimbursement of \$1064.64 in lodging expenses incurred while on TDY.

*Erica S. Beardsley*

ERICA S. BEARDSLEY

Board Judge