



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 24, 2018

CBCA 6231-TRAV

In the Matter of DAVID C. ANDERSON

David C. Anderson, McDonough, GA, Claimant.

Karen E. Hickey, Office of Chief Counsel, Transportation Security Administration, Department of Homeland Security, Arlington, VA, appearing for Department of Homeland Security.

RUSSELL, Board Judge.

Claimant, David C. Anderson, a Federal Air Marshal (FAM) for the Transportation Security Administration (TSA), seeks \$148 in per diem expenses. For the reasons stated below, we deny Mr. Anderson's claim.

Background

On September 25, 2017, Mr. Anderson was scheduled to depart at 11:45 p.m. on an international flight from Atlanta, Georgia, to Lagos, Nigeria. The flight's actual departure time was delayed until 12:03 a.m. on the following day. Before each international mission, Mr. Anderson must arrive at his field office in East Point, Georgia, three hours before departure for an equipment inspection and to obtain his official passport. For this mission, Mr. Anderson left his home at 7:30 p.m. to report on time.

TSA paid Mr. Anderson a per diem allowance for meals and incidental expenses for September 25. Later, a quarterly travel audit found that this allowance was impermissible. The Federal Air Marshal Service's (FAMS) Travel & Accounting department explained that, under the Federal Air Marshal Service Local Travel and Temporary Travel Rules (ADM 1510), travel time begins when a FAM's scheduled outbound flight actually departs.

Because his flight pushed back from the gate after midnight, FAMS deemed Mr. Anderson ineligible to receive a per diem allowance for September 25. The Travel & Accounting department advised Mr. Anderson that he was required to return the improperly paid per diem allowance of \$148.

In his appeal, Mr. Anderson disputes that travel time begins when a plane pushes back from the gate, arguing that TSA Management Directive 1000.6 (TMD 1000.6) is controlling and supersedes ADM 1510, which also cannot be valid because it is unsigned. Relying on TMD 1000.6's statement that "TSA generally follows the [Federal Aviation Administration Travel Policy (FAATP)], Chapter 301," Mr. Anderson cites to FAATP 301-11.12 to contend that travel time begins on the day that an employee departs from his or her "home, office, or other authorized point."

In his reply to the agency's response, Mr. Anderson further avers that TSA "has tried to retroactively correct [its] deficiencies." He explains how the agency has updated the copy of ADM 1510 that is available on his employee portal home page.¹ Mr. Anderson notes that the home page also provides a new travel policy titled "LE/FAMS 1005," which expressly superseded ADM 1510 as of September 7, 2018. He also points out the disparate treatment that a non-FAM TSA employee would receive with respect to per diem reimbursement for similar travel, and claims that using push back from the gate as a start time is unreasonable since many FAMS' expenses will not be reimbursed. Finally, Mr. Anderson questions why an instructional guide he uses for submitting vouchers through the employee portal instructs users to select "home" as their start and end point.

Discussion

TSA is permitted by statute to adopt its own policies regarding travel reimbursement. *William V. Kinney*, CBCA 5861-TRAV, 18-1 BCA ¶ 37,184, at 180,991–92 (discussing TSA's creation under the Federal Aviation Administration, its transfer to the Department of Homeland Security, and its statutory right to set travel policies affecting FAMS). TSA adopted certain rules for FAMS' per-diem eligibility with ADM 1510, including the following:

For FAM missions originating at airports within the 50 mile radius, travel time begins with the departure of the FAM's scheduled outbound flight ("block

¹ The previous version had "2nd Draft" written on the cover page, whereas the current version has "Policy" written in the same place.

time,” push back from gate), and travel time ends with the arrival of the FAM’s scheduled inbound flight (“block time,” arrival at gate).

In the present appeal, Mr. Anderson’s mission originated at an airport within fifty miles of his field office, and the travel time for his mission to Lagos began when the plane pushed back from the gate at 12:03 a.m. on September 26. Therefore, Mr. Anderson is not eligible for a per diem allowance for September 25.

Mr. Anderson contends that ADM 1510 is invalid because it lacks a signature. He also questions the existence of multiple versions of this policy as well as the use of push back from the gate as the time for commencing per diem allowability. However, one of our predecessor boards recognized the validity of and applied ADM 1510 to travel claims involving FAMs. *Andrew J. Kohl*, GSBCA 16869-TRAV, 07-1 BCA ¶ 33,447 (2006); *Douglas E. Hickey*, GSBCA 16571-TRAV, et al., 05-2 BCA ¶ 33,010. The claimant in *Kohl* argued that ADM 1510 was inapplicable because it was unsigned; the General Services Board of Contract Appeals (GSBCA) disagreed. 07-1 BCA at 165,788. As for the difference in the versions made available to Mr. Anderson, we find it to be of no consequence since they were nearly identical – the relevant portions on calculating travel start and end times were exactly the same. Further, like the claimant in *Kohl*, Mr. Anderson objects to use of flight departure as the start of official travel. However, as the GSBCA stated in the *Kohl* decision, although Mr. Anderson “disagrees with the [travel] policy, [he] has presented no compelling reason to declare [the policy] invalid.” *Id.*

Mr. Anderson also notes that there is a new travel policy, LE/FAMS 1005, which officially superseded ADM 1510 on September 7, 2018, and that an instructional guide for submitting travel vouchers advises FAM employees to select “home” for their start and end points. However, LE/FAMS 1005 has language similar to ADM 1510 regarding when travel begins and ends. The instructional guide simply provides guidance to employees on how to use the agency’s multi-trip electronic voucher system. The guide does not purport to set forth agency travel policy for FAMs.

Finally, contrary to Mr. Anderson’s assertion, TSA’s TMD 1000.6 does not control his entitlement to per diem notwithstanding its applicability to non-FAM TSA employees. Mr. Anderson specifically cites to section 6, paragraph A of TMD 1000.6 to assert that TSA generally follows FAATP chapter 301 for FAMS travel. Yet, in the following paragraph, it states that “[t]his section does not apply to FAMS mission travel[,]” which is the type of travel at issue here. TMD 1000.6-6.B.

Decision

For the reasons stated above, the claim is denied.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge