



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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May 28, 2019

CBCA 6412-TRAV

In the Matter of MARK E. WOLFF

Mark E. Wolff, Jacksonville, FL, Claimant.

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

**SHERIDAN**, Board Judge.

Claimant, Mark E. Wolff, a civilian employee of the United State Army Corps of Engineers (USACE) whose permanent duty station (PDS) is Jacksonville, Florida, was sent on an extended temporary duty (TDY) assignment to assist in the Federal Emergency Management Agency (FEMA) 2017 hurricane season relief effort in the United States Virgin Islands (USVI). Claimant was authorized a trip home for the winter holidays during the TDY period. Instead of traveling home to his PDS, claimant traveled to southwestern Broward County, Florida, to spend the holidays with his family. He has requested the Board's review of the USACE's establishment of a debt in the amount of \$1099.66 that he was paid for per diem and airfare for the trip home that he took to a location other than Jacksonville.

Background

Prior to leaving his PDS in Jacksonville, and concerned about being home for the winter holidays, claimant asked about his rights to return home. On November 22, 2017, FEMA issued a memorandum for other agencies' employees who were sent to USVI and Puerto Rico to assist in the hurricane relief effort:

According to the FEMA Travel Manual, Chapter 2-2, Section F-3, "As authorized, travelers on extended TDY assignments may periodically return to

their residence of record with prior approval of the Supervisor. Extended TDY means directed, continuous travel of 45 days for OCONUS assignments, including, Alaska, Hawaii, and US Territories.

Claimant states he “was informed verbally by both the SAJ EOC [USACE Jacksonville District Emergency Operations Center] and the FEMA on-site leadership” that he would “be allowed a brief return home for the holiday.”<sup>1</sup>

Claimant departed from Jacksonville, arrived at St. Croix, USVI, and reported to the mission on December 8, 2017.

In late December, after verbally confirming his travel plans with the mission’s designated Federal Disaster Recovery Coordinator (FDRC), claimant contacted the travel office and arranged for a trip home for the winter holidays. As his family was spending the winter holidays in Broward County, Florida, claimant chose to travel to Broward County instead of his PDS in Jacksonville. On December 24, 2017, claimant flew into Miami, Florida, and rented a vehicle. Claimant states that flying into Miami and renting a vehicle, instead of returning to his PDS in Jacksonville, reduced his time away from the mission and the travel costs to the Government.

The USACE Finance Center TDY Audit Support Office later reviewed claimant’s travel voucher for the travel and determined that Mr. Wolff was overpaid \$1099.66 for per diem and airfare associated with a round trip to Miami, Florida, for the time period December 24 through 27, 2018:

Mr. Wolff was in a leave status for the period 24 December 2018-27 December 2018. Mr. Wolff relied on a Federal Emergency Management Agency (FEMA) memo dated 22 November 2017 to depart the TDY destination for a round trip to Miami, Florida. The Federal Travel Regulation (FTR) does not contain guidance regarding an authorized return. In contrast, the Joint Travel Regulations (JTR), Part 020312, Return to Permanent Duty Station (PDS) During Long-Term TDY states in part: “The return must be either to the PDS location or to the place from which a traveler commutes daily to the PDS location” and further states: “A. Authorized Returns, 1. Authorized returns must be authorized in the travel authorization.” The employee’s travel orders did not authorize an authorized return. Mr. Wolff did not return to his

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<sup>1</sup> Claimant states that “[a]t the time of my travel I was not aware of the FEMA holiday travel policy issued for this time frame, but relied upon [the SAJ EOC and the FEMA on-site leadership] verbal guidance.”

home of record (HOR), which was Jacksonville, Florida, but instead elected to travel to an alternate leave location. Hence, Mr. Wolff did not return either to the PDS or to the place from which he commutes daily to the PDS location.

### Discussion

The rules governing this matter are set forth in the FTR and the JTR. The FTR provides:

Your agency may authorize per diem or actual expenses and round-trip transportation expenses for periodic return travel on non-workdays to your home or official station . . . [when p]eriodic return travel home is justified incident to an extended TDY assignment.

41 CFR 301-11.23 (2017).

The comparable provision of the JTR expressly states, “The return must be either to the PDS location or to the place from which a traveler commute[s] daily to the PDS location.” JTR 020312. The Board has applied a similar regulation, JTR 4445-A.1<sup>2</sup>, in decisions holding that agencies may not reimburse airfare costs to alternate locations when return travel is undertaken in the course of an extended TDY assignment. *Lauren L. Prieur*, CBCA 5742-TRAV, 17-1 BCA ¶36,832; *Valentina Caperton*, CBCA 2933-TRAV, 13 BCA ¶35,218; *Bradley P. Bugger*, CBCA 555-TRAV, 07-1 BCA ¶33,579. Claimant’s airfare and per diem costs for the trip to Broward County instead of his PDS are, therefore, not reimbursable. Even though travel to Broward County may have been less expensive than travel to Jacksonville, it does not factor into the analysis. Any official who approved claimant’s plans to travel to Broward County instead of Jacksonville had no authority to agree to reimburse the cost of travel because the travel was contrary to the regulations. As we stated in *Bugger*:

Only expenses authorized by statute or regulation may be reimbursed, because allowing an agency to make a payment in the absence of such authority would violate the Appropriations Clause of the Constitution. The Supreme Court consequently has made clear that an executive branch employee’s promise that

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<sup>2</sup> Effective October 1, 2014, the JTR and the Joint Forces Travel Regulations were consolidated and merged into a single set of regulations called the JTR. This resulted in the amendment and renumbering of the JTR. JTR 4445-A.1 provided that a TDY traveler who traveled to a location, other than the PDS/home, for personal reasons was not authorized transportation expense reimbursement. The regulation is now found at JTR 020312.

the Government will make an “extrastatutory” payment is not binding. *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947); see *Bruce Hidaka-Gordon*, GSBCA 16811-RELO, 06-1 BCA ¶ 33,255; *Teresa M. Erickson*, GSBCA 15210-RELO, 00-1 BCA ¶ 30,900.

07-1 BCA at 166,342; accord *Caperton*, 13 BCA at 172,804.

Decision

The claim is denied.

*Patricia J. Sheridan*

PATRICIA J. SHERIDAN

Board Judge