



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 5, 2019

CBCA 6471-TRAV

In the Matter of MARK A. MAJESTIC

Mark A. Majestic, Pikesville, MD, Claimant.

Maria Montilla, Director, Accounting Management Group, Office of Financial Management, Centers for Medicare and Medicaid Services, Department of Health and Human Services, Baltimore, MD, appearing for Department of Health and Human Services.

ZISCHKAU, Board Judge.

Mark A. Majestic, the claimant, seeks our review of the Centers for Medicare and Medicaid Services' (CMS)¹ denial of his claim for \$2745.84 in local travel expenses for the use of his privately owned vehicle (POV). Mr. Majestic incurred these expenses during the months of October and November 2018, and January through April 2019 by traveling regularly between his residence in Pikesville, Maryland, and the Department of Veterans Affairs (VA) in Washington, D.C., where he was assigned on a detail. CMS denied Mr. Majestic's claim on the ground that the travel was a non-reimbursable part of his regular commute to his official duty station. For the reasons discussed below, we find that Mr. Majestic was on local travel during his trips to Washington, D.C., and he should be reimbursed to the extent that the local travel cost exceeds his commuting cost.

Background

In a memorandum dated August 1, 2018, Mr. Majestic received orders from his supervisor at CMS to go on a detail to the VA. Mr. Majestic's original assignment was for

¹ CMS is a division of the Department of Health and Human Services (HHS).

120 days, from October 1, 2018, to January 31, 2019, but was later extended an additional 120 days, from February 3 to June 8, 2019. Mr. Majestic did not remain on the detail until June 8 or ultimately return to CMS, because he transferred from CMS to a new position with the Social Security Administration (SSA) on May 26, 2019, an action unrelated to the proceedings here.

The detail was considered to satisfy Mr. Majestic's yearly Senior Executive Service (SES) requirement for his position with CMS. It was governed by an interagency agreement (IAA) between the VA and CMS, under which the VA agreed to reimburse CMS for "[a]ny associated travel and per diem expenses incidental to official travel." Among Mr. Majestic's duties during the detail were to support the VA in its efforts to stop fraud, waste, and abuse by helping develop a computer matching agreement with CMS, serve as a liaison between the two agencies to help grow their partnership, and help the VA use CMS's expertise regarding data analytics.

Mr. Majestic submitted travel vouchers for the days that he drove his POV from his residence to the VA, a distance of 45.2 miles according to Google Maps. At all relevant times, Mr. Majestic's residence was in Pikesville. For nearly half the time he was on the detail, Mr. Majestic worked from home. The agency argues that Mr. Majestic should not be reimbursed because when he was assigned on the detail, his official duty station changed from Woodlawn, Maryland, to Washington, D.C., and therefore his travel was simply his regular commute, not official travel for CMS. Mr. Majestic argues that at all times his official duty station was Woodlawn, and therefore each day that he drove to the VA, he was conducting official business on behalf of CMS.

Mr. Majestic points to his SF-50, which lists his official station as Woodlawn, as evidence that his official station never changed. Furthermore, he explains that he never submitted travel vouchers for trips that he made back to CMS because he understood that travel to be his non-reimbursable commute to his official station. All iterations of the IAA also list Mr. Majestic's official duty station as Woodlawn, and his position of record as Director, Investigations and Audits Group, Center for Program Integrity, Centers for Medicare and Medicaid Services. The IAA specifically refers to Mr. Majestic's detail as "temporary duty" (TDY) and the VA as his "temporary duty station."

Mr. Majestic claims that his supervisor at CMS reiterated that he would be reimbursed for his travel to the VA while on the detail. The record also shows that a representative at the VA explained to Mr. Majestic that the VA would not reimburse CMS for any commuting expenses that he incurred.

Discussion

This case turns on whether Mr. Majestic’s official duty station for the duration of the detail remained at Woodlawn, or if it changed to Washington, D.C. A federal employee “traveling on official business away from [his] designated post of duty” is entitled by statute to a per diem allowance, reimbursement of actual travel expenses, or a combination of both. 5 U.S.C. § 5702(a)(1) (2012). Accordingly, when an HHS employee travels within the local transportation area—defined as no more than fifty miles from the employee’s place of work or residence—the employee may only be reimbursed costs associated with official travel, or official business. HHS Travel Policy Manual § 4.2.2 (2018). It is a longstanding rule that expenses incurred during an employee’s regular commute are not reimbursable because the commute between an employee’s residence and his official duty station is personal, not official, travel. *Frank A. Conforti*, CBCA 828-TRAV, 07-2 BCA ¶ 33,693, at 166,786; *New York Transit Strike*, 60 Comp. Gen. 633, 635 (1981).

The Federal Travel Regulation (FTR) defines “official travel” as travel “from an employee’s official station or other authorized point of departure to a temporary duty location and return from a temporary duty location.” 41 CFR 300-3.1 (2018) (FTR 300-3.1). The FTR defines “official station” as “the location where the employee regularly performs his or her duties.” FTR 300-3.1. Whether an assignment was a change of duty station or TDY is a question of fact to be determined by considering “the orders directing the assignment, the duration of the assignment, and the nature of the duties performed.” *Frank A. Conforti*, 07-2 BCA at 166,786. We also take into account where the employee expects, and is expected, to spend the majority of his time. *Id.* at 166,786. We do not view the “papers processed by an agency” to be conclusive in determining the employee’s official duty station. *James D. Fenwood*, GSBICA 15104-RELO, 00-1 BCA ¶ 30,658, at 151,357 (1999).

We find that Mr. Majestic’s official duty station remained at Woodlawn. There is no formal travel authorization for Mr. Majestic’s detail, and the assigning memorandum inconclusively states that Mr. Majestic was to “work out duty station” with his supervisor at the VA. However, the IAA states that the detail is TDY. The IAA also provided clear beginning and ending dates for the detail, even when it was extended 120 additional days. Although Mr. Majestic did not in fact return to CMS after that period, these dates contemplated that he would return after the detail, indicating that the agency indeed intended the assignment to be temporary.

The greater part of Mr. Majestic’s duties at the VA related directly to maintaining the partnership between the two agencies. In fact, Mr. Majestic states that about 75% of his duties related to CMS. Moreover, the detail itself was the direct product of Mr. Majestic’s SES requirement for his position with CMS. It is true that Mr. Majestic and his supervisors

at the VA expected that he would spend the majority of his time on the detail at the VA in Washington, D.C. However, this factor holds less weight in light of the other factors, particularly when considering that Mr. Majestic ultimately worked from home nearly half the days he was on the detail. Mr. Majestic's SF-50 and the interagency agreement both support the conclusion that Mr. Majestic's official duty station never changed from Woodlawn. OPM guidance relating to an employee's official worksite indicates that the employing agency must document an employee's official worksite through a notification of personnel action such as an SF-50, and that if an employee is temporarily detailed to a position in a different location, the employee's official worksite is not affected. *See* 5 CFR 531.605. CMS therefore erred in determining that Mr. Majestic's expenses were unreimbursable commuting expenses.

Mr. Majestic's claim for local transportation reimbursement, in excess of his normal commute cost from his residence to his official duty station, is consistent with the requirement that normal commuting expenses be deducted from reimbursements. *Paul A. Monderer*, CBCA 6355-TRAV, 19-1 BCA ¶ 37,300; HHS Travel Policy Manual § 4.2.4.2. Mr. Majestic is entitled to the applicable POV rate on a mileage basis. Per diem is not requested as he was not in a travel status for more than twelve hours. *See Caleb B. Halstead*, CBCA 5988-TRAV, 18-1 BCA ¶ 37,154; *Jerry B. Dulworth*, GSBCA 16035-TRAV, *et al.*, 03-2 BCA ¶ 32,312, at 159,859.

Decision

The claim is granted.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge