



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 10, 2021

CBCA 6881-RELO

In the Matter of IRA E.

Ira E., Claimant.

Ilona M. Keller, Human Resources Specialist, Civilian Personnel Directorate, Department of the Army, APO Area Europe, appearing for Department of the Army.

O'ROURKE, Board Judge.

Claimant, Ira E., an Army employee assigned overseas, retired from federal service at the conclusion of his tour of duty and seeks reimbursement of rental car expenses, quarters allowances, and utility expenses in connection with his transfer back to the United States. We grant the rental car claim since claimant's actual travel costs were less than the constructive costs of travel by the authorized mode. We dismiss the claim for quarters allowances as moot since the agency has paid the claim. We dismiss the utility claim because it is a compensation claim, not a relocation claim, and therefore, is outside of the Board's delegation of authority.

Background

Claimant's travel orders authorized transportation, per diem, and temporary quarters subsistence allowance (TQSA). The orders specifically identified three modes of transportation as permissible: rail, air, and personally owned conveyance (POC). Well in advance of his travel, claimant coordinated with the installation's servicing travel office to make transportation arrangements for him, his spouse, and their two pets.¹ The itinerary proposed by the servicing travel office included multiple flights and taxis between his duty

¹ Claimant paid all costs related to transporting his pets.

station in Europe and his home in Oregon. The last leg of the trip crossed the Cascade Mountain Range, Mt. Hood, and several other mountain passes. There was no train or bus service to his hometown. It could only be reached by air or by vehicle, and travel during the winter months was especially challenging. Claimant determined that renting a car was the best option for getting him, his spouse, all of their luggage, and their two pets, from the Seattle airport to their home.² The agency informed claimant that he needed authorization on his travel orders to rent a car. In support of his request, claimant provided the approving official (AO) with a constructive travel worksheet, showing about \$1500 cost savings to the Government by having claimant fly to Seattle and then rent a car for the remaining portion of the trip.

Notwithstanding the potential savings, claimant's request was denied because it was perceived as a "convenience rental," in contravention to a policy aimed at employees who want to rent cars at government expense while awaiting shipment of their personal vehicles. Claimant obtained an exception to policy memorandum for the rental car from the Garrison Staff Judge Advocate's office. Nonetheless, claimant's orders were never modified to include the authorization. Instead, claimant was informed that if he chose to rent a car in Seattle, it would be treated as a POV, and he would be reimbursed for mileage.

After completing all travel, claimant submitted a request for reimbursement for the full costs of the rental car, along with other travel-related expenses, such as eight days of overlap between his living quarters allowance (LQA) and TQSA, and the cost of refilling the oil tank in his apartment in Germany at the conclusion of his tenancy, as required by the terms of his lease. The agency denied all three claims, and this appeal ensued.

In response to claimant's appeal before the Board, the agency stood behind its decision to grant only the mileage for the rental car. It agreed to approve for payment four of the eight days of LQA-TQSA overlap. Regarding claimant's utility expense (oil refill for the apartment tank), the agency stated that although it was an authorized expense, the Board did not have the authority to decide it, so the agency would work with the human resources office to pay it, or a pro-rated portion of it.

The Board recently confirmed that the parties resolved the claim for additional quarters allowance. Since the claim is moot, we need not address it here. For the utility cost at issue, we find that it is, by regulation, an element of compensation, and thus not included in the Board's authority to resolve claims incident to an employee's relocation. Our

² It is unclear from the record whether there were no flights at all from the Seattle airport to the airport closest to his home for the requested dates, or just no flights for the pets. Whichever the case, it is not relevant to the analysis here.

reasoning on that issue, along with an examination of the claim for the rental car costs, is below.

Discussion

As an Army employee, claimant was subject to both the Joint Travel Regulations (JTR) and the Federal Travel Regulation (FTR). *Shelia D. Bacon*, CBCA 4339-RELO, 15-1 BCA ¶ 36,014. The Board has long held that in the event of a conflict, the FTR takes precedence. *Michael P. Strand*, CBCA 5776-TRAV, 18-1 BCA ¶ 36,993; *Jimmy D. Graves*, CBCA 963-TRAV, 08-1 BCA ¶ 33,805. The FTR authorizes the payment of subsistence and transportation allowances to employees posted overseas who return home upon completion of their assignment and separate from service. 41 CFR 302-4.2 (2019). It is well settled that “once an employee has successfully completed an OCONUS [outside the continental United States] tour of duty, the agency must pay the cost of relocating that employee either to the home of record or other location selected by the employee, up to the constructive cost of returning the employee to his or her home of record at the time of transfer.” *Kendra O. Finklea*, CBCA 6674-RELO, 20-1 BCA ¶ 37,590; *Henry J. Maciog*, CBCA 6521-RELO, 20-1 BCA ¶ 37,502; *Richard Gong*, CBCA 5824-RELO, 18-1 BCA ¶ 36,997; *Sheri L. Ellis-Smith*, CBCA 4022-RELO, 15-1 BCA ¶ 36,057.

When making travel arrangements on behalf of an employee, the agency will select the mode of travel that is most advantageous to the Government. 41 CFR 301-10.4. If, however, the employee chooses to travel by another method, the employee is liable for any additional costs. The FTR specifically addresses this issue:

§301-10.6 - What is my liability if I do not travel by the authorized method of transportation?

If you do not travel by the method of transportation required by regulation or authorized by your agency, any additional expenses you incur which exceed the cost of the authorized method of transportation will be borne by you.

41 CFR 301-10.6

The agency contends that since claimant’s orders did not authorize use of a rental car, claimant cannot be reimbursed for rental car expenses, with the exception of mileage. We disagree. Here, claimant submitted a constructive cost of travel worksheet showing that by renting a car from Seattle to his home, versus flying from Seattle to a smaller airport near his home, then taking a taxi or other conveyance the rest of the way, claimant would save the Government approximately \$1500. In a constructive cost case such as this, we compare the actual travel cost of the employee, regardless of mode, to the cost by an allowable mode.

The employee receives whichever amount is less. *Jeffrey M. Downing*, CBCA 5032-RELO, 16-1 BCA ¶ 36,221; *see also Carolyn Brown*, CBCA 2402-TRAV, 11-2 BCA, ¶ 34,796 (“It has long been the rule that when a federal traveler uses an unauthorized method of transportation, he or she may be reimbursed the incurred cost of such transportation limited by the constructive cost of the authorized, standard method of transportation.”); *Peter C. Thurman*, GSBCA 15562-TRAV, 01-2 BCA ¶ 31,516 (employee was entitled to constructive travel costs for use of an unauthorized rental car.); *Ronald D. Beeman*, 60 Comp. Gen. 38 (1980) (“The authorization of a particular mode or modes of travel on an employee’s travel order does not defeat the employee’s right to reimbursement for travel expenses on a constructive cost basis when the employee travels by a mode of transportation other than authorized.”).

While much of the record includes discussions about rental car policies and pets—issues that are undoubtedly important to the parties—they are simply not part of the calculus here. What complicates this analysis, however, are the numerous regulations pertaining to the authorization, use, and reimbursement of rental cars. For example, the FTR states: “Your agency must determine that use of a rental vehicle is advantageous to the Government and must specifically authorize such use.” 41 CFR 301-10.450(a). It also states: “You are responsible for any additional cost resulting from the unauthorized use of a commercial rental automobile for other than official travel-related purposes.” *Id.* 301-10.453. The JTR states: “To be reimbursed, an AO must authorize or approve use of a rental vehicle.” JTR 020209-A. And most relevant here: “[a] rental vehicle may only be authorized in advance for PCS transportation when other transportation modes are not advantageous to the Government. If not authorized in advance, and the civilian employee or dependent uses a rental vehicle, it is reimbursed as though a POV was used.” JTR 053601-D.

While most of the rental car provisions are proper in their context, the agency may not construe these provisions in a manner that is inconsistent with the FTR’s requirement that agencies pay relocation travel expenses limited only by the constructive cost of the authorized method of transportation. This last provision instructs the agency to treat an unauthorized rental car as a POV, and to reimburse the employee accordingly, which is what the Army did in this case. This provision of the JTR is inconsistent with the FTR, and as we previously noted, when these regulations conflict, the FTR prevails.

As we have explained many times, the FTR is a “legislative rule”—a regulation issued under express authority from Congress, for the purpose of affecting individual rights and obligations by filling gaps left by a statute, after following the Administrative Procedure Act’s notice and comment provisions. It therefore has controlling weight—the force of law—unless the provision in question is arbitrary, capricious, or manifestly contrary to statute. Any agency

rule which is inconsistent with an FTR provision is consequently trumped by the FTR and must give way.

Stephen M. England, CBCA 3903-TRAV, 15-1 BCA ¶ 35,870 (quoting *Robert A. Cherry*, CBCA 3878-TRAV, 14-1 BCA ¶ 35,707); *Kevin D. Reynolds*, CBCA 2201-RELO, 11-1 BCA ¶ 34,756 (“An agency rule which conflicts with the Federal Travel Regulation . . . is invalid.”). For these reasons, the agency must perform the required comparison and pay claimant for the rental car costs he incurred up to the constructive cost of the authorized mode of travel.

Utility Expense (Oil Tank Refill)

According to claimant’s rental agreement, he was required to depart his quarters with a full tank of heating oil. He complied with this requirement and sought reimbursement of the expense on his travel voucher. In its response, the agency stated, “There is no dispute that [claimant] is entitled to the reimbursement of the expenditures for oil,” and noted that it was working with the Civilian Human Resources Agency – Europe to reimburse him in full, if possible, or at a pro-rated amount. The agency added, however, that it provided this update only as a matter of completeness, since this issue “does not fall under the jurisdiction of the Board but rather would be a matter for the Office of Personnel Management (OPM).” We agree.

Pursuant to 31 U.S.C. § 3702(a)(3) (2018), the Administrator of General Services has the authority to “settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station.” The Administrator has delegated this authority to the Board. *See* ADM 5450.39D CHGE 1, GSA Delegations of Authority Manual, ch. 19 (Jan. 19, 2021); *see also* *Nathan G. Fox*, CBCA 6991-RELO, 20-1 BCA ¶ 37,645 (citing *Willie J. Chandler*, CBCA 5286-RELO, 16-1 BCA ¶ 36,348). The expense at issue involves a utility cost. Under the JTR, the miscellaneous expense allowance (MEA) authorizes reimbursement of certain utility costs pursuant to PCS travel, but MEA is not permitted for separating employees. *See* JTR 054102, tbl. 5-81 at 1b (authorizing reimbursement for non-refundable utility fees or deposits); *see also* JTR 054101-B.4 (“The following personnel are ineligible to receive an MEA . . . [a] civilian employee assigned to a PDS OCONUS returning to the actual residence for separation.”).

Even if claimant were not retiring, we find that MEA is not the appropriate allowance to authorize reimbursement of costs associated with refilling the oil tank. Rather, this expense is properly identified by the agency as one covered by LQA, which is a form of employee compensation, under 5 U.S.C. § 5923(a)(2), that falls within OPM’s review and settlement authority. *Rebecca J. Lott*, CBCA 6356-RELO, 19-1 BCA ¶ 37,286; *Willie J.*

Chandler (“The Board has repeatedly recognized that LQA is not a travel, transportation, or relocation expense that would fall within the authority that the Administrator of General Services has delegated to it, but is instead a species of federal employee compensation that falls within OPM’s settlement authority.”).

The Department of State Standardized Regulations (DSSR), the implementing regulations for this statutory allowance, defines LQA as “a quarters allowance granted to an employee for the annual cost of suitable, adequate, living quarters for the employee and his/her family.” DSSR 131.1. It further provides that “LQA rates are designed to cover substantially all of the average employee’s costs for rent, heat, light, fuel, gas, electricity, water, taxes levied by the local government and required by law or custom to be paid by the lessee.” *Id.* 131.3. According to claimant and the agency, the cost of refilling the oil tank is an expense customarily provided for in local area leases. Since we find that this expense falls outside the Board’s delegation of authority from the GSA Administrator, we dismiss it.

Decision

We grant the claim for rental car expenses up to the constructive costs of the authorized mode of travel. We dismiss the quarters allowance claim as moot. We dismiss the utility expense because we lack the authority to decide it.

Kathleen J. O’Rourke
KATHLEEN J. O’ROURKE
Board Judge