



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 8, 2022

CBCA 7431-TRAV

In the Matter of DAVID T.

David T., Claimant.

Annapurna Coontz, Director, Travel Policy, Compliance, and Training, Missile Defense Agency, Department of Defense, Redstone Arsenal, AL, appearing for Department of Defense.

SHERIDAN, Board Judge.

Claimant, who elected to use his privately-owned vehicle (POV) instead of an available Government-owned vehicle (GOV) because his wife was joining him on his temporary duty (TDY) travel, is entitled to recover POV mileage for the trip to and from his permanent duty station (PDS) to the TDY location because the agency authorized POV mileage.

Background

Claimant, David T., seeks reimbursement for use of his POV to perform TDY travel from his PDS at Huntsville, Alabama, to Clearwater, Florida. Prior to leaving on TDY, claimant contacted the fleet vehicle office seeking to utilize a GOV for conducting TDY. Although a GOV was available, claimant was denied use of the vehicle because he was going on leave in conjunction with TDY. Claimant's travel orders authorized the use of his POV for the TDY.

Claimant used his POV for the TDY travel and drove on his alternative work schedule day, December 2, 2021, to the home of his wife's parents in West Melbourne, Florida. He stayed there through the weekend and then drove to Clearwater for TDY from December 6

through 10. He returned to West Melbourne on December 10 and took annual leave before driving back to Huntsville on December 14.

Upon returning from TDY, claimant sought reimbursement for his mileage from his PDS to his TDY and back. He did not seek reimbursement for the mileage to West Melbourne. The approving official denied reimbursement because a GOV was available and, but for the leave taken in association with the TDY, a GOV could have been used.

Discussion

In deciding this matter, we look to the Federal Travel Regulation (FTR), and because claimant is a civilian employee of the Department of Defense, we also look to the Joint Travel Regulations (JTR). But for his taking leave and traveling to West Melbourne prior to and after TDY, claimant would have been authorized a GOV for his TDY. However, claimant's travel orders authorized claimant to use his POV with a mileage rate of \$0.56 per mile. As we stated in *Issy Cheskes*, CBCA 5586-TRAV, 17-1 BCA ¶ 36,665, at 178,545:

“[I]n any case in which an employee who is engaged on official business for the Government chooses to use a privately owned vehicle in lieu of a Government vehicle, payment on a mileage basis is limited to the cost of travel by a Government vehicle.” 5 U.S.C. § 5704(c) (2012); *see* 41 CFR 301-10.310 (2016).

....

At the time that [claimant] sought authorization to travel, the GOV for his office was available for his use. [Claimant's] travel authorization properly stated that he would be reimbursed at the lower GOV rate.

While *Cheskes* would imply that claimant should only be paid the mileage rate for use of a GOV, the travel authorization controls the determination of reimbursements to which an employee is entitled:

The travel order establishes the conditions, in writing, under which official travel and transportation are authorized at Government expense. . . . The written travel order assists in fund control and meeting the requirements of recording obligations at the time they are incurred. Moreover, the order provides a notice and record of the employee's instructions and entitlements. *Lewis J. Kraft*, B-198937 (Apr. 15, 1981); *Robert Gray*, B-203820 (Oct. 19, 1981). Consequently, legal rights and liabilities in regard to travel allowances vest as and when travel is performed under a competent order; generally, the

order may not be revoked or modified retroactively so as to increase or decrease the rights and benefits which have become fixed under applicable statutes and regulations. *Dana Riser*, GSBICA 14017-RELO, 98-1 BCA ¶ 29,417; *Donald R. Del Balzo*, B-253504 (Feb. 14, 1994).

Andre E. Long, GSBICA 14498-TRAV, 98-1 BCA ¶ 29,731, at 147,387.

Both the FTR and the JTR require that the agency select the method of transportation most advantageous to the Government. 41 CFR 301-10.4 (2020) (FTR 301-10.4); JTR 020203 (Dec. 2021). The FTR “contains presumptions regarding the most advantageous method of transportation and directs that ‘POVs should be determined to be the most advantageous method of transportation only after your agency evaluates the use of a common carrier, a Government-furnished automobile, and a rental car.’” *Cheskes* (citing 41 CFR 301-10.5(d)). The applicable JTR provision, which supplements the FTR for civilian employees traveling for military agencies, orders the agency to:

consider the needs of the traveler, the purpose of travel, the cost, and other factors and do one of the following:

- A. Provide Government transportation.
- B. Purchase commercial transportation on behalf of the traveler.
- C. Reimburse the traveler for personally purchased transportation.
- D. Reimburse the traveler for use of a privately owned vehicle (POV).

JTR 020101. However, a “traveler’s personal choice must not be the sole determining factor for authorization.” JTR 020203-A.3.b(2). In this instance, the agency approved option D. Therefore, we assume, because the record is not clear, that the agency made the determination that a POV was the method of transportation most advantageous to the Government.

Pursuant to the aforementioned circumstances and precedent, it is claimant’s travel authorization that controls here, and he should be reimbursed for the use of his POV at the mileage rate of \$0.56. The agency cannot retroactively change the travel authorization after the travel has been performed. “As a general rule, once travel is authorized, the employee’s right to reimbursement of travel costs vests as the travel is performed, and ‘valid travel orders cannot be revoked or modified retroactively, after the travel is completed, to decrease rights that have already become fixed.’” *Douglas W. Morris*, CBCA 5574-TRAV, 17-1 BCA ¶ 36,664, at 178,543 (quoting *Renee Cobb*, CBCA 5020-TRAV, 16-1 BCA ¶ 36,240, at 176,819). There is no evidence in the record to suggest that the authorization was erroneous. Nor did the authorization conflict with any law, regulation, or agency instruction. “Validly issued travel orders cannot be retroactively amended by the agency.” *Id.* at 178,544.

Had the authorizing official in this matter authorized a GOV instead of claimant's POV, the agency would have been able to limit reimbursement to no more than claimant would have received had he used a GOV. Therefore, so long as the agency makes clear in the travel authorization that a GOV is available and authorized for claimant's use, along with the appropriate GOV mileage rate, the agency can limit an employee's reimbursement to what the FTR provides:

FTR 310-10.310 What will I be reimbursed if I am authorized to use a Government-furnished automobile and I use a privately owned automobile instead?

You will be reimbursed based on a constructive mileage rate limited to the cost that would be incurred for use of a Government-furnished automobile. This rate will be published in an FTR bulletin available at <https://www.gsa.gov/ftrbulletins>. If your agency determines the cost of providing a Government-furnished automobile would be higher because of unusual circumstances, it may allow reimbursement not to exceed the mileage rate for a privately owned automobile. In addition, you may be reimbursed other allowable expenses as provided in § 301-10.304.

41 CFR 310-10.310.

Decision

This matter is returned to the agency for calculation of the amount due to claimant using the applicable POV mileage rate as authorized by claimant's travel authorization.

Patricia J. Sheridan

PATRICIA J. SHERIDAN

Board Judge