



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 28, 2022

CBCA 7214-RELO

In the Matter of DAVID A.

David A., Claimant.

Jenny Bender, Team Lead, Civilian Permanent Duty Travel Section, Air Force Installation and Mission Support Center, Department of the Air Force, Ellsworth Air Force Base, SD, appearing for Department of the Air Force.

ZISCHKAU, Board Judge.

Claimant, David A., has requested reconsideration of one portion of our decision in *David A.*, CBCA 7214-RELO (Feb. 18, 2022), in which we denied his claim for reimbursement of lodging and per diem at point of debarkation (POD) in Chicago, Illinois, on a trip that originated in Frankfurt, Germany. Board Rule 407 provides that “[m]ere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration.” 48 CFR 6104.407 (2020). “A motion for reconsideration should not be used as a vehicle to present authorities available at the time of the first decision or to reiterate arguments previously made.” *Delaware Valley Floral Group, Inc. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1384 (Fed. Cir. 2010). Indeed, “[a]n argument made for the first time in [such a] motion . . . comes too late and is ordinarily deemed waived.” *Golden Bridge Technology, Inc. v. Apple Inc.*, 758 F.3d 1362, 1369 (Fed. Cir. 2014). “A tribunal is always free to consider such an argument, however, to correct clear error or prevent manifest injustice.” *George Panos*, CBCA 4946-RELO, 16-1 BCA ¶ 36,402 (citations omitted).

Here, the claimant asks us to reconsider our denial of his claim for lodging at the POD and per diem. As background, the itinerary prepared by the agency’s travel management company (TMC) provided that the claimant would depart Frankfurt, Germany, at 11:50 a.m. and arrive in Atlanta, Georgia, at 3:46 p.m. According to the TMC itinerary, claimant would

have had a layover for about five hours before departing at 9:08 p.m. on a connecting domestic flight to St. Louis, Missouri, which had an arrival time of 9:50 p.m. Claimant's destination, Scott Air Force Base, is a forty-minute drive from the St. Louis airport. In his reconsideration brief, claimant admits that the TMC itinerary "did not have any overnight stops." Lodging overnight for the evening arrival in St. Louis would not have been reimbursable and there would have been no additional per diem.

Claimant argues, however, that the TMC itinerary "was only a proposed travel itinerary from a commercial entity and the TMC cannot direct that [claimant] fly the entire trip" and that he was authorized to use his privately-owned conveyance to make a lengthy drive for the last leg of the trip he chose. We understand from the record that claimant chose a non-contracted airline fare because the airline he chose would allow him to bring his pet with him whereas the TMC contracted airline would not. The non-contract travel itinerary that claimant ultimately chose departed Frankfurt at 10:45 a.m. and arrived in Chicago at 1:00 p.m. Upon arrival in Chicago, claimant had to drive approximately 295 miles to Scott Air Force Base. Instead of driving approximately five hours directly to Scott Air Force Base on the day of his arrival, claimant chose to spend the night in Chicago. He thereafter sought reimbursement for overnight lodging as well as per diem.

That claimant's flight was more "direct" (in terms of mileage) than the flight proposed by the TMC is irrelevant to our analysis. The TMC's proposed itinerary did not require lodging upon arrival. Claimant's decision to take another flight that terminated in Chicago does not entitle him to lodging and per diem. Claimant is responsible for any additional costs resulting from his failure to use the agency's travel service. 41 CFR 301-50.5 (FTR 301-50.5).

Decision

Claimant's request for reconsideration is denied.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge