



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 30, 2024

CBCA 8234-TRAV

In the Matter of PEDRO D.

Pedro D., Claimant.

Nancy L. Caldwell, Chief, Travel Section, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

GOODMAN, Board Judge.

Claimant is an employee of the Department of Homeland Security (agency). He asks the Board to review the agency's determination regarding reimbursement of the meals and incidental expenses (M&IE) portion of his per diem allowance incurred during a long-term temporary duty (TDY) assignment that resulted in claimant's alleged \$1185 debt.

Background

Claimant was authorized travel from his permanent duty station (PDS) on a long-term TDY assignment to Chicago, Illinois, scheduled from February 26, 2024, to June 22, 2024. He arrived in his TDY location on February 28, 2024, at which time he began receiving General Services Administration (GSA) per diem allowances for the Chicago locality. Claimant stayed at a hotel within the Chicago TDY location between February 28, 2024, and March 28, 2024, and the expenses he incurred for this period are not at issue.

On March 29, 2024, claimant moved to a hotel in Oak Brook, Illinois. This hotel was located in DuPage County and was within the Oak Brook Terrace, not Chicago, GSA per diem area. The GSA per diem allowances applicable to this location were less than those applicable to the Chicago TDY location. Claimant stayed at the Oak Brook hotel until

June 15, 2024, and then returned to his PDS. He entered on his travel voucher, and was reimbursed for, the Chicago TDY location per diem allowances for his Oak Brook lodging period—March 29, 2024, to June 15, 2024. The agency’s travel section performed a post-payment travel audit and determined, based on the applicable provisions of the Federal Travel Regulation (FTR), that the incorrect, higher Chicago TDY location per diem allowances were used for the travel voucher submissions and reimbursements for claimant’s Oak Brook lodging period.

Claimant was informed that because the Chicago TDY per diem allowances were not applicable to his Oak Brook lodging period, he had been overpaid and owed \$7116.20 for vouchers filed from March 29, 2024, through June 15, 2024. According to the audit, the per diem allowances in 2024 for Oak Brook Terrace included a \$114 daily lodging rate and a \$64 M&IE rate. The Chicago per diem allowances, on the other hand, included, for March 2024, a \$146 daily lodging rate and a \$79 M&IE rate and, for April to June 2024, a \$216 daily lodging rate and a \$79 M&IE rate. According to the agency, claimant was overpaid \$1185 in M&IE, \$5700 in lodging costs, and \$231.20 in hotel taxes, totaling \$7116.20.

Claimant requested a review of the audit findings and maintained the proper per diem allowances were used in his vouchers, asserting that the lodging location was within the locality of the TDY location and pointing to the name of the hotel in Oak Brook Terrace, which included the word “Chicago.” The agency requested clarification from GSA regarding the locality rate of the lodging location. GSA responded that the agency correctly determined the lodging and per diem allowances were based on the lodging location zip code, which spans two counties. The second hotel was in DuPage County where the lower Oak Brook Terrace per diem allowances were applicable.

According to the agency, the FTR limited the M&IE rate to that set by GSA for the locality where claimant’s lodging was located—a different locality with lower per diem rates than those in effect at the TDY location where he stayed for the first portion of his TDY. *See* 41 CFR 301-11.7, -11.8 (2023) (FTR 301-11.7, -11.8). However, the agency responded that the debt could be revised if it received an actual expense justification to exceed the per diem lodging limit for the Oak Brook Terrace locality, as permitted by FTR 301-11.30. The claimant submitted an acceptable actual expense justification, and the agency revised the debt to remove the costs of lodging (\$5700) and hotel tax (\$231.20) from the alleged debt owed.

With regard to the remaining debt of \$1185 for M&IE, the agency notified claimant that he was authorized to provide an itemized list of meals and incidental expenses, without receipts, in order to be reimbursed for those actual expenses, which might further reduce the debt pursuant to FTR 301-11.306. Claimant did not provide an itemization of his meals and

incidental expenses and, instead, contested the M&IE allowances for the lodging location. The agency upheld the audit findings and determined a final total debt of \$1185.

Claimant's Office of Field Operations (OFO) filed a claim with the Board, on claimant's behalf, asking for relief from the debt determination made by the agency. In the claim, claimant asserts that he saved the Government travel funds by lodging outside the TDY location in a locality with lower lodging costs and no parking expenses and that the claimant chose to move to that lodging location from the TDY location based on safety concerns. The management and program analyst from the OFO who submitted the claim states: "The [OFO] is requesting to appeal the [audit decision]. OFO supports excusing [claimant] of this travel debt if we are legally able to do so."

Discussion

The relevant portion of the FTR reads as follows:

§ 301-11.7 What determines my maximum per diem reimbursement rate?

Your TDY location determines your maximum per diem reimbursement rate. If you arrive at your lodging facility after 12 midnight, you claim lodging cost for the preceding calendar day. If no lodging is required, the applicable M&IE reimbursement rate is the rate for the TDY location. (See § 301-11.102.).

§ 301-11.8 What is the maximum per diem rate I will receive if lodging is not available at my TDY location?

If lodging is not available at your TDY location, your agency may authorize or approve the maximum per diem rate for the location where lodging is obtained.

FTR 301-11.7, -11.8.

Lack of lodging is not at issue here, as the TDY location had available lodging. Recognizing that claimant lodged in a location that was less expensive than the TDY location, the agency provided him with an after-the-fact opportunity to further reduce his debt by itemizing, without receipts, his actual expenses up to the TDY location M&IE rate pursuant to FTR 301-11.302. Claimant did not avail himself of that opportunity, and the agency determined, pursuant to FTR 301-11.306, that claimant's M&IE reimbursement for the relevant period was limited to the GSA-prescribed maximum M&IE rate where he lodged.

We recognize that claimant chose lodging outside of the TDY location for reasons of safety and government cost savings. Even so, where an employee chooses—irrespective of the reason—to lodge outside of the TDY location despite the availability of available lodging at the TDY location, the Board, under identical circumstances to claimant’s, has required the application of the per diem rates of the lodging location, not the TDY location. In *Jonathan Toy*, the employee booked lodging in a location that neither he nor his supervisor realized was slightly outside the designated TDY area and had lower per diem allowances. CBCA 5383-TRAV, 16-1 BCA ¶ 36,501, at 177,848. The employee asserted that while lodging was available in the TDY location, “reputable” hotels suitable for his assignment were not. *Id.* Even though the agency paid less for the employee to lodge close to (but outside of) the TDY location than it would have paid for him to lodge at the TDY location, the agency later determined that it overpaid him for both lodging expenses and M&IE, exceeding the maximum per diem allowances for the location where he lodged outside the TDY location. *Id.* The Board held that, pursuant to FTR 301-11.7 and -11.8, the employee was only entitled to the lower M&IE rate in effect at the location where he lodged and was indebted for the difference between that rate and the amount he had been reimbursed. *Id.*

Accordingly, pursuant to the FTR and the Board’s *Jonathan Toy* decision, the agency’s post-audit determination of claimant’s debt was correct. Claimant’s OFO has asked if claimant can be legally excused of his debt. A remedy that may be available to claimant is a waiver of the debt. A request for waiver must be directed to the appropriate agency official. See *Brian R. Wybrecht*, CBCA 5475-TRAV, 16-1 BCA ¶ 36,497, at 177,842; 5 U.S.C. § 5584(a) (2018). This Board lacks authority to act upon a waiver request. *Jonathan Toy*, 16-1 BCA at 177,849.

Decision

The agency has correctly limited claimant’s reimbursement of M&IE to the per diem allowances for M&IE applicable to the lodging location and not the TDY locality. Claimant is indebted for the amount determined by the agency as the difference between the amount he has been previously reimbursed and the amount resulting from the rate applicable to the lodging location.

Allan H. Goodman

ALLAN H. GOODMAN

Board Judge