



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 29, 2024

CBCA 8095-TRAV

In the Matter of PATRICIA S.

Patricia S., Claimant.

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

KULLBERG, Board Judge.

Claimant, an employee of United States Customs and Border Protection (CBP), an agency within the Department of Homeland Security (DHS), seeks review of CBP's assessment of a debt for previously reimbursed per diem in the amount of \$32,308.95 while she was on temporary duty (TDY) at the Ronald Reagan Building (RRB) in Washington, D.C. CBP contends that claimant worked less than fifty miles from CBP's office in Baltimore, Maryland, which it contends was her permanent duty station (PDS), and CBP had not approved a waiver for claimant to perform TDY less than fifty miles from her PDS. Claimant argues that her residence, which was more than fifty miles from the RRB, was her authorized alternate worksite. For the reasons stated below, the Board grants the claim.

Background

On February 10, 2021, DHS issued a memorandum of agreement (MOA) between the CBP Office of Field Operations (OFO) at the Port of Baltimore in Baltimore, Maryland, the employing organization, and the CBP Operations Support, CBP Watch (CBPW), the gaining organization. The MOA established the terms for claimant's joint duty assignment (JDA) for those two CBP offices. Claimant's position with the gaining organization, CBPW, was "a virtual duty assignment." The MOA defined a gaining organization as "[t]he organization to which an individual is assigned for the duration of the [JDA]," and the employing

organization was defined as the “[t]he organization that is either nominating or releasing a member of their organization for a temporary JDA.” The stated purpose of the MOA was “to stipulate the roles and responsibilities of the employing organization, gaining organization, and employee on a JDA.” The MOA further provided that the responsibilities of the employing organization included “[o]ut-process[ing] and in-process[ing] [the] employee; the contents of this MOA and any other applicable information (to include generating [a standard form fifty (SF-50)] for the gaining organization).” Additionally, the MOA required that the employing organization “[f]und employee [TDY] that is in support of detail assignment.” The start date of claimant’s JDA was April 19, 2021, with an end date of April 19, 2022. On March 3, 2022, DHS extended the JDA to August 16, 2022.

The OFO issued a telework agreement (agreement) with claimant that had a start date of January 5, 2022, and an end date of January 4, 2023. The agreement showed claimant’s duty city as Baltimore. However, the agreement showed claimant’s alternate worksite as her residence. Claimant has represented that the only time she did not work from her residence was to attend quarterly training related to her qualifications as a law enforcement officer. Claimant worked from her residence primarily for the CBPW, but in March 2022, she also provided support to the OFO one day a week from her residence.

On March 31, 2022, claimant received an email informing her that she had been “selected to participate in the inaugural activation of the CBP Incident Management Assistance Team (IMAT).” Claimant received TDY orders for the period from April 8 to August 4, 2022, at CBP’s headquarters at the RRB for “IMAT Training [with the Federal Emergency Management Agency].” Claimant’s TDY orders included a traveler profile that showed her home address, an out-of-state office address, and the OFO as her duty station address at the Port of Baltimore. Additionally, the TDY orders showed estimated reimbursable expenses for TDY in the amount of \$41,592.23.

Claimant submitted biweekly vouchers for expenses related to her TDY that included lodging and other expenses. The distance from claimant’s residence to the RRB is roughly sixty-five miles.¹ DHS paid claimant’s vouchers for TDY expenses through June 30, 2022, which totaled \$32,308.95. On July 15, 2022, CBP informed claimant that she did not qualify for TDY because the OFO was less than fifty miles from the RRB, and her residence was not an approved alternate worksite. Claimant ended her TDY and returned to her residence that same day. On August 11, 2022, CBP demanded that claimant repay the amount of \$32,308.95.

¹ The record includes computer-generated directions that show a distance of 64.8 miles from claimant’s residence to the RRB.

Claimant submitted this matter to the Board, seeking relief from CBP's demand for repayment of previously reimbursed TDY expenses. As a result of CBP's demand for repayment of per diem, claimant stated that she had not submitted a claim for reimbursement of TDY for the period from July 1 to 15, 2022, which was approximately \$4107. CBP submitted its agency report, which contended that claimant was not entitled to TDY because her PDS was less than fifty miles from the RRB, and her SF-50 did not reflect any other authorized place of work. Claimant responded that her residence was her regular place of work in accordance with her telework agreement and the JDA, and the distance from her residence to the RRB was more than fifty miles.

Discussion

The issue before the Board is whether the distance between the location of claimant's place of work and the location of her TDY was greater than fifty miles. Statute provides the following:

(a)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee, when traveling on official business away from the employee's designated post of duty, or away from the employee's home or regular place of business (if the employee is described in section 5703 of this title), is entitled to any one of the following:

(A) a per diem allowance at a rate not to exceed that established by the Administrator of General Services for travel within the continental United States, and by the President or his designee for travel outside the continental United States.

5 U.S.C. § 5702(a)(1) (2018). The Federal Travel Regulation (FTR) provides the following with regard to TDY:

When am I eligible for an allowance (per diem or actual expense)?

When:

- (a) You perform official travel away from your official station, or other areas defined by your agency;
- (b) You incur per diem expenses while performing official travel: and
- (c) You are in a travel status for more than 12 hours.

41 CFR 301-11.1 (2021) (FTR 301-11.1). The FTR defines “official station” as follows:

An area defined by the agency that includes the location where the employee regularly performs his or her duties or an invitational traveler’s home or regular place of business (see § 301-1.2). The area may be a mileage radius around a particular point, a geographic boundary, or any other definite domain, provided no part of the area is more than 50 miles from where the employee regularly performs his or her duties or from an invitational traveler’s home or regular place of business. If the employee’s work involves recurring travel or varies on a recurring basis, the location where the work activities of the employee’s position of record are based is considered the regular place of work.

FTR 300-3.1. Section 7.2 of DHS’ Financial Management and Policy Manual (FMPM) authorizes TDY travel “that is at least 50 miles away from the employee’s permanent duty station (PDS) (i.e., the primary address at which the employee works).” FMPM § 7.2 at 2. A TDY location that is less than fifty miles away requires a waiver. *Id.*

The Board finds that claimant is entitled to per diem because the distance from her residence, which was her official station, to the RRB was in excess of fifty miles. With regard to the location of an employee’s official station, the Board has recognized the following:

The papers processed by an agency are not conclusive proof of an employee’s official station of employment. *See Tracy Jones*, GSBCA 15659-TRAV, 02-1 BCA ¶ 31,687 (2001). A duty station is determined from the surrounding circumstances of an employee’s hiring and work situation. *Robert L. Shotwell*, CBCA 1887-TRAV, 10-2 BCA ¶ 34,514; *Michael A. Stirber*, CBCA 1271-TRAV, 08-2 BCA ¶ 34,006. An important factor to be considered is the parties’ expectations as to where the employee will spend the greater part of his time. *Id.*; *John P. DeLeo*, GSBCA 14042-TRAV, 97-2 BCA ¶ 29,156. How the agency and the employee treated the assignment at the time it was made is especially important. *Gerard R. Sladek*, GSBCA 14145-TRAV, 98-1 BCA ¶ 29,403 (1997).

Jeffrey E. Koontz, CBCA 3251-TRAV, 13 BCA ¶ 35,318, at 173,372. CBP contends that claimant’s SF-50 shows that the OFO was claimant’s PDS, and DHS regulations require that a TDY location be more than fifty miles from an employee’s PDS unless a waiver is granted. However, the documentary evidence in this matter, the MOA, JDA, and claimant’s telework agreement, show that claimant had a virtual assignment, which allowed her to work full time at her residence. CBP does not refute those facts. Moreover, the FTR defines official station

in broad terms to include “where the employee regularly performs his or her duties.” FTR 300-3.1. The FMPM uses a similar definition, which is “the primary address at which the employee works.” FMPM § 7.2 at 2. Those definitions necessarily include claimant’s residence, given the circumstances of her work, and there is no dispute that claimant’s residence was more than fifty miles from the RRB.

Even assuming that claimant’s official station was the OFO in Baltimore, claimant’s entitlement to per diem vested when claimant performed her travel under her TDY orders, and CBP cannot now revoke those orders. This Board has stated the following:

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.” *Renee Cobb*, CBCA 5020-TRAV, 16-1 BCA ¶ 36,240, at 176,819; *see Tomila K. Hearon*, CBCA 3995-TRAV, 15-1 BCA 35,904, at 174,512 (2014) (“As a general rule, TDY orders shall not be retroactively changed to increase or reduce an employee’s reimbursable expenses.”); *Nidavan Kanasawadse*, GSBGA 16508-TRAV, 05-1 BCA ¶ 32,913, at 163,044. The rule applies unless there was an error on the face of the orders or the orders were clearly in conflict with a law, regulation, or agency instruction. *Jeffrey E. Koontz*, CBCA 3251-TRAV, 13 BCA ¶ 35,318, at 173,372; *Jack J. Pagano*, CBCA 1838-TRAV, 10-1 BCA ¶ 34,408, at 169,877. “[W]hen all or part of the particular order involves an exercise of discretionary factors by the authorizing official, the order will be presumed correct in the absence of clear evidence of misapplication of those factors.” *Pagano*, 10-1 BCA at 169,877.

Douglas W. Morris, CBCA 5574-TRAV, 17-1 BCA ¶ 36,664, at 178,543. Claimant’s entitlement to per diem vested when CBP issued her TDY orders, and the Board does not find that the face of her TDY orders show a clear error or violation of law or regulation. CBP has not shown valid grounds for invalidating claimant’s TDY orders after the fact.

In addition to seeking relief from CBP’s demand for repayment, claimant also brought this matter to recover per diem expenses from July 1 to 15, 2022, but she had not submitted a claim for per diem for those days. The Board’s rules require that a claimant submit a claim to the agency for adjudication before filing that same claim with the Board. 48 CFR 6104.401(c). However, this Board has recognized “on numerous occasions where an agency has issued a travel or relocation expense repayment demand to an employee, we have not required the employee to follow up with a formal ‘claim’ to the agency disputing that demand before coming to the Board, but have decided the cases without requiring further agency proceedings.” *Joshua W. Hughes*, CBCA 6678-RELO, 20-1 BCA ¶ 37,555, at

182,348. An agency determination is not necessary where the submission of a claim would be futile. *Id.* Accordingly, the Board finds claimant entitled to be reimbursed for per diem from July 1 to 15, 2022, and the Board remands that part of this matter to the agency to allow claimant to submit her claim and for the agency to determine the amount of reimbursement in accordance with this decision.

Decision

The claim is granted. The debt collection action is permanently stayed, and any amounts of the debt collected shall be returned to claimant. This matter is remanded to the agency to allow for payment of any per diem not previously reimbursed.

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge