



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 20, 2016

CBCA 5290-RELO

In the Matter of LEE P. SMITH

Lee P. Smith, Yellowstone National Park, WY, Claimant.

Timothy Bailey, Accounting Operations Center, National Park Service, Herndon, VA,
appearing for the Department of the Interior.

SULLIVAN, Board Judge.

Claimant, Lee P. Smith, seeks review of the denial of his reimbursement request by the Department of the Interior, National Park Service (NPS), for tow dolly rental expenses incurred in connection with his permanent change of station. While driving his second personally owned vehicle (POV) to his new duty station, Mr. Smith used a tow dolly to transport his third POV. The NPS denied Mr. Smith's reimbursement request because the NPS did not find it advantageous to the Government to transport more POVs than there are licensed drivers in Mr. Smith's immediate family.

For the reasons that follow, we deny Mr. Smith's request. The Federal Travel Regulation (FTR) only permits the NPS to reimburse the transportation of up to two POVs and does not include the tow dolly as a reimbursable expense in connection with the transportation of Mr. Smith's second POV.

Background

On September 4, 2015, NPS issued travel orders authorizing Mr. Smith's permanent change of station from Blacksburg, Virginia, to Yellowstone National Park, Wyoming. The NPS authorized Mr. Smith to incur expenses for travel with two POVs and the delayed travel

of Mr. Smith's spouse. In October 2015, Mr. Smith drove his first POV to his new duty station.

In January 2016, Mr. Smith contacted the NPS' Chief of Maintenance regarding his spouse's travel to Wyoming. Mr. Smith was concerned that his spouse, who has a disability, would have difficulty flying to Wyoming and then traveling without Mr. Smith to Mr. Smith's new duty station. The Chief of Maintenance determined that there would be cost savings for the Government if Mr. Smith were to fly to Virginia and drive back to Wyoming with his spouse. The Chief of Maintenance authorized Mr. Smith to rent a tow dolly as a reasonable accommodation of his spouse's disability.

In February 2016, pursuant to temporary duty (TDY) travel orders,¹ Mr. Smith returned to Virginia to assist his spouse with her transport to Wyoming. Prior to the Smiths' departure from Virginia, Mr. Smith charged \$325.28 to his centrally billed government credit card for the rental of a tow dolly. Mr. Smith drove his second POV with his wife as a passenger and used the tow dolly to transport a third POV to Wyoming.

Mr. Smith submitted a voucher for Mr. Smith's and his spouse's travel, including the charges for the tow dolly rental.² NPS denied reimbursement for the rental of the tow dolly, because this cost had not been included in his authorization.

In his submission to the Board, Mr. Smith contends that he is entitled to \$325.28, because the expense had been approved by his supervisor. Mr. Smith also submitted a letter from the Chief of Maintenance in support of his claim. The Chief of Maintenance states that Mr. Smith was entitled to reimbursement for the rental of the tow dolly because, as the department/agency head, she had the authority to approve the tow dolly rental as a reasonable accommodation of a disability.

In its response, NPS explains that the FTR only permitted the agency to authorize the transportation of a POV when it "would be more advantageous and cost effective to the Government to transport your POV to the new official station at Government expense and to pay for the transportation of you and/or your immediate family member by commercial means[.]" *See* 41 CFR 302-9.301(c) (2015). Because "neither Mr. Smith nor his immediate family traveled via commercial means[.]" NPS stated that it was not advantageous to the

¹ NPS authorized Mr. Smith's temporary duty travel, including a one-way flight back to his old duty station.

² Mr. Smith did not claim "any transportation [or] per diem expenses for himself while assisting his spouse with travel."

Government to reimburse Mr. Smith for the transportation of the third POV. NPS further asserts that "[NPS] cannot see a situation where it would be in the interest of the government to cover the costs of transporting -either [sic] by physically driving, or by shipping/towing-[sic] more vehicles than there are licensed drivers between the employee and his/her immediate family."

Discussion

The Government shall reimburse the travel or transportation expenses of an employee and his immediate family when the employee is transferring from one official duty station to another official duty station. 5 U.S.C. § 5724(a)(1) (2012). The privately owned vehicles of a government employee "may be transported at government expense to a new official station of the employee when the agency determines that such transport is advantageous and cost-effective to the Government." 5 U.S.C. § 5727(c). However, the authorization to transport the effects of an employee at Government expense is "not an authorization to transport an automobile[,] . . .[e]xcept as specifically authorized by statute." 5 U.S.C. § 5727(a).

Implementing regulations require that the agency decide whether it is more advantageous to allow the employee to use the POV to drive to the new duty station or to have it transported at government expense. 41 CFR 302-9.13. If an employee is authorized to drive his POV to his new duty station, the employee's "reimbursement will be limited to the allowances provided in part 302-4 [regulations governing transportation for temporary duty travel]." *Id.* These expenses include per diem allowance, transportation costs, and "other travel expenses in accordance with 5 U.S.C. 5701-5709 and chapter 301 of this title." 41 CFR 302-4.701. The FTR also does not provide for reimbursement for tow dolly rentals to transport an extra vehicle to a new duty station. *Joe L. Custer*, CBCA 3667-TRAV, 14-1 BCA ¶ 35,633, at 174,497 (citing 41 CFR 301-10.304) ("The applicable Federal Travel Regulation (FTR) identifies reimbursable expenses in addition to the mileage rate allowance when a privately owned vehicle is utilized. The rental costs for a trailer are not reimbursable expenses."). While an agency may determine that use of a tow dolly is a cost-effective way to transport a POV, *Christi L. Oliver*, GSBCA 16075-RELO, 03-1 BCA 1132,233, at 159,366, an agency may only authorize the transportation of "the number of POVs equal to the number of people on the relocation travel orders, who are licensed drivers, not to exceed two." 41 CFR 302-9.302.

Mr. Smith's travel orders listed two people, Mr. Smith and his spouse, and authorized Mr. Smith to incur costs for travel of two POVs. With his claim for the tow dolly rental costs, Mr. Smith seeks costs for transporting vehicles that exceed the number of licensed drivers in Mr. Smith's immediate family as well as the restriction of "not to exceed two"

POVs. Further, as noted, tow dolly rental costs are not among the types of expenses to be reimbursed when traveling by POV, so the rental costs cannot be reimbursed as transportation costs incident to the second trip.

The rental costs also are not reimbursable under 41 CFR 301-13.2 as a reasonable accommodation of Mr. Smith's spouse's disability. That provision states that the Government may provide additional travel expenses when the "additional travel expense is necessary to accommodate a special physical need." However, payment is limited "to an employee with a special need." 41 CFR 301-13.1. Even if the term "an employee" may be read to include an employee's dependent where the travel is for the purpose of relocating between permanent duty stations, the tow dolly rental was not necessary to accommodate the special travel needs of an employee; the tow dolly was necessary to transport a third POV.

Decision

The claim is **DENIED**.

MARIAN E. SULLIVAN
Board Judge