



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 2, 2018

CBCA 6154-RELO

In the Matter of RUBEN E. MIRANDA

Ruben E. Miranda, Santo Domingo, Dominican Republic, Claimant

Maj. Devon A.R. Wells, Chief, Administrative Law, Office of the Staff Judge Advocate, United States Southern Command, Department of the Army, Doral, FL, appearing for Department of Defense.

SHERIDAN, Board Judge.

Background

The claimant, Ruben E. Miranda, is a civilian executive officer working with the Department of Defense's (DOD) Office of Security Cooperation at the United States Embassy in Santo Domingo, Dominican Republic. Prior to this assignment, claimant held a civilian position with the Defense Contract Audit Agency, which stationed him for approximately thirty-two months at the United States Southern Command (SOUTHCOM) in Doral, Florida. For his new position in the Dominican Republic, claimant was ordered to report to SOUTHCOM on October 1, 2017, for processing before traveling to Santo Domingo to begin his position.

Initially, claimant was advised that the in-processing would be completed within ten days. His original permanent change of station (PCS) orders, dated August 8, 2017, authorized a variety of expenses, but did not include a foreign transfer allowance (FTA). Due to circumstances beyond the claimant's control, he experienced a significant delay; the in-processing period took longer than anticipated and his dependents' diplomatic visas had not been timely issued by the Dominican Consulate. On October 4, 2017, SOUTHCOM amended the claimant's travel orders to authorize sixty days of temporary duty (TDY) status

while these issues were resolved. Again, the amended travel orders did not include authorization for an FTA.

Claimant continued to stay at his Florida residence near SOUTHCOM until his household goods (HHG) were collected for shipment to the Dominican Republic on October 27, 2017. That same day, claimant checked in to a hotel in Doral, where he resided with his family until they were cleared to depart the United States on November 28, 2017. Claimant continually communicated with SOUTHCOM, Civilian Personnel Division throughout this time to provide updates regarding his travel and TDY status. After his arrival to his new permanent duty station (PDS) in the Dominican Republic, claimant submitted a travel voucher seeking reimbursement. The Defense Finance and Accounting Service (DFAS) denied the majority of the claim, only paying the portion of en route costs associated with delivering claimant's automobile to the vehicle processing center in Atlanta, Georgia, for overseas shipment. Claimant made several more attempts to obtain reimbursement through SOUTHCOM and his new local office, but to no avail.

On June 7, 2018, claimant submitted his claim to the Board seeking reimbursement for lodging, transportation, meals, and incidental expenses incurred during the TDY period from October 27 to November 28, 2017.¹ SOUTHCOM avers that under the Joint Travel Regulations (JTR) the claimant cannot recover, because such per diem allowances are not authorized when the TDY is sufficiently close to either of the duty stations. In the instant case, the claimant resided in a hotel that was in the same city where his original PDS was located.

The claimant does not contest SOUTHCOM's reading of the JTR. Rather, he points to the fact that SOUTHCOM staff provided him with travel orders indicating that the TDY expenses were authorized, and that he relied on them with "full confidence that USSOUTHCOM J1² were [sic] aware of the regulations and the allowable entitlements."

¹ This is the final iteration of the claim sought. There were inconsistent requests throughout the record.

² J1 is the acronym for the agency's Manpower & Personnel Directorate.

Discussion

A. The TDY Claim

TDY cannot be authorized for a DOD civilian employee “who travels or has a TDY within the PDS limits or within the vicinity of or at the residence from which the commute takes place daily to the official station . . . [nor a]t the old or new PDS for a TDY en route in connection with PCS travel. This applies even if the traveler vacated the permanent residence at the old PDS and was in temporary lodging during the TDY.” JTR 020603-B.2, tbl. 2-27. During the claimed TDY period from October 27 to November 28, 2017, the claimant resided in a hotel located less than one mile away from his old PDS. Therefore, the claimant cannot be reimbursed for TDY expenses incurred during this period, contrary to what was indicated by his erroneously-authorized travel orders.

The fact that the claimant relied in “full confidence” on SOUTHCOM’s authorization does not overcome the JTR’s limitations. “It is well established that the Government may not authorize the payment of money if not in accordance with statute and regulation.” *William T. Orders*, GSBCA 16095-RELO, 03-2 BCA ¶ 32,389, at 160,290 (citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)); see *Charles T. Oliver*, GSBCA 16346-RELO, 04-1 BCA ¶ 32,614, at 161,405 (“[A]bsent a specific provision in statute or regulation granting an exception under certain circumstances, neither an agency nor this Board has the authority to waive, modify, or depart from the Government’s official travel regulations for the benefit of any federal employee who is subject to them.”). Hence, any misinformation relied on by the claimant which he received from a SOUTHCOM employee cannot bind the agency since it conflicts with the JTR. See *Roger D. St. Louis*, CBCA 5855-RELO, 18-1 BCA ¶ 36,930, at 179,927.

However, the claimant’s travel orders can be amended retroactively. Under limited circumstances, travel orders may be amended when “(a) there is an error on the face of the orders, (b) the orders do not conform to applicable statutes and regulations, and (c) ‘the facts and circumstances surrounding the issuance of an authorization clearly demonstrate that some provision which was previously determined and definitely intended to be included was omitted through error or inadvertence in preparing the authorization.’” *Peggy L. Clevenger*, CBCA 3854-RELO, 14-1 BCA ¶ 35,796, at 175,080. From the facts of this case, it appears that it was SOUTHCOM’s intent to reimburse the claimant for expenses he incurred on behalf of himself and his dependents during the period lasting from October 27, 2017 to November 28, 2017. Specifically, the October 4 amendment to claimant’s travel orders indicates this intent.

B. The FTA Claim

Claimant is eligible for reimbursement of his expenses under an FTA. The Department of State Standardized Regulations (DSSR) govern official overseas travel by federal civilian employees, including PCS transfers. *See Lee Ethel Edwards*, CBCA 5446-RELO, 17-1 BCA ¶ 36,643, at 178,460. The DSSR defines FTA as “an allowance under 5 U.S.C. 5924(2)(A) for extraordinary, necessary and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing him or herself at any post of assignment in a foreign area . . . prior to departure for such post.” DSSR 241.1(a). The FTA consists of four distinct components, one of which is pre-departure subsistence expenses. DSSR 241.2(c). The regulation describes the scope of this component as:

applicable to lodging, meals (including tips), laundry, cleaning and pressing expenses in temporary quarters for employee and each member of family for up to 10 days before final departure from a post in the United States to a post in a foreign area, beginning not more than 30 days after they have vacated residence quarters. Expense of local transportation is not allowable.

Id.

Additional guidance on pre-departure subsistence expenses can be found in DSSR 242.3(c). It states,

The ten days may be anywhere in the U.S. (calculated using the per diem rate of the U.S. post of assignment) as long as employee or family members have not begun travel on orders and final departure is from the U.S. post of assignment. If in an agency’s judgment unusual circumstances cause an employee or family member to be unable to travel to the foreign post of assignment within the ten day limit, the agency may permit additional days beyond the ten allowed. (One example of a reason to approve beyond the ten days may be if employee submitted application for passport/visa in a timely manner and still did not receive documents in time to proceed to the foreign area.)

The claimant incurred the expenses at issue incident to establishing himself at his new post in the Dominican Republic, a foreign area, prior to departing from his old post. The claimed period began on the same calendar day that he vacated his residence quarters. The October 4 amendment to the travel orders authorized sixty days of claimant’s anticipated expenses arising from the fact that his dependents’ visas had not been timely issued. There

is no evidence in the record that claimant contributed to the delayed issuance of his dependents' visas. Finally, it appears that SOUTHCOM's intent was to authorize the claimant's reimbursement for these expenses.

Decision

The claim for TDY is denied. Claimant is entitled to FTA for himself and his family for the period lasting from October 27, 2017, to November 28, 2017. We remand the case to the agency to calculate the correct amount of FTA.

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge