



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 27, 2022

CBCA 7490-RELO

In the Matter of KRISTINA M.

Kristina M., Claimant.

Maj. Matthew Firing, Command Judge Advocate, 408th Contracting Support Brigade, Camp Arifjan, Kuwait, appearing for Department of the Army.

KULLBERG, Board Judge.

Claimant, Kristina M., seeks reimbursement in the amount of \$1246.35 for return airfare, shipment of household goods (HHG), and per diem from her former permanent duty station (PDS) outside of the continental United States (OCONUS) to the continental United States (CONUS). At issue are claimed costs related to claimant's travel to her home of record after separating from government service. For the reasons stated below, the Board grants, in part, the claim.

Background

Claimant transferred to her former OCONUS PDS on April 14, 2019. On September 26, 2020, the Army issued travel orders that authorized claimant's return travel to CONUS following separation from government service. The travel orders provided for transportation and shipment of claimant's HHG, but the orders also required a fourteen-day quarantine at an Army facility upon her arrival in CONUS due to the COVID-19 pandemic. Those orders provided for receipt of per diem and shipment of HHG; the estimated travel expense was \$1600. On September 24, 2020, claimant purchased an airline ticket for return travel to CONUS on a non-U.S. flag carrier in the amount of \$429.58. Claimant shipped her HHG by United States mail on September 25, 2020. On September 27, 2020, claimant

resigned from her position with the Army, and she departed from her former PDS on October 1, 2020.

On October 1, 2020, claimant arrived at her first connecting stop, Istanbul, Turkey. That same day, she purchased a new airline ticket from Istanbul to CONUS in the amount of \$427.65 on a U.S. flag carrier. She returned to CONUS the next day without undergoing the fourteen-day quarantine.

In her letter dated August 10, 2022, claimant submitted her claim to the Army in the amount of \$1246.35, which consisted of two airline tickets (\$857.23), shipment of HHG (\$347.87), and per diem (\$41.25). On August 22, 2022, the Army denied her claim. On August 23, 2022, claimant submitted her claim to the Board.

Discussion

At issue is whether claimant is entitled to reimbursement of her claimed expenses for returning to CONUS after resigning from her position with the Army. The Army contends that claimant is not entitled to any reimbursement for reasons that include: claimant's submission of an untimely claim; her incurring travel expenses before receipt of authorization for her travel; the lack of a service agreement; her travel on a non-U.S. flag carrier for part of her trip; and her refusing to undergo a fourteen-day quarantine upon arrival in CONUS. Claimant contends that she is entitled to reimbursement of costs related to her return to CONUS because she had completed the minimum twelve-month overseas tour of duty, and she was attempting to return to CONUS in time to begin a new job. Also, claimant contends that she had already left government service at the time of her travel and was not subject to the quarantine requirement upon her return.

As an initial matter, the Board addresses the Army's contention that claimant has brought an untimely claim because she filed her claim with the Board almost two years after her travel. Statute provides that a claim for either travel or relocation expenses "must be received by the official responsible . . . for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues." 31 U.S.C. § 3702(a)(3) (2018). That statute "permits claims which are received by the Board or the affected agency within six years of the date on which the claim accrues." *Barbara L. Massey-Nino*, CBCA 3071-RELO, 13 BCA ¶ 35,423, at 173,772 (discussing 31 U.S.C. § 3702). Claimant's submission of her claim was well within that six-year statutory period. The Army asserts that "most of the witnesses mentioned are no longer employed by the agency or have been reassigned elsewhere." The Army's contention is of no avail because claimant has complied with the statutory requirement for filing a timely claim. Nothing in statute or regulation supports the Army's contention that a claim becomes untimely because of the departure or transfer of agency personnel with knowledge of the claim.

The Board's discussion, accordingly, turns to whether claimant is entitled to reimbursement of any of her travel expenses. Statute provides the following:

(a) Under regulations prescribed under section 5738 of this title and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations—

(1) travel expenses of a new appointee and transportation expenses of . . . his household goods and personal effects from the place of actual residence at the time of appointment to the place of employment outside the continental United States; [and]

(2) these expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the continental United States

. . . .

(c) An agency may pay expenses under subsection (a)(2) of this section only after the individual has served for a minimum period of—

. . . .

(2) not less than one nor more than 3 years prescribed in advance by the head of the agency, if employed in any other position;

unless separated for reasons beyond his control which are acceptable to the agency concerned. These expenses are payable whether the separation is for Government purposes or for personal convenience.

5 U.S.C. § 5722. Additionally, statute provides the following:

When an employee transfers to a post of duty outside the continental United States, his expenses of travel and transportation to and from the post shall be allowed to the same extent and with the same limitations prescribed for a new appointee under section 5722 of this title.

Id. § 5724(d).

The Federal Travel Regulation (FTR), which applies to claimant, states the following:

Must my agency pay for return relocation expenses for my immediate family and me once I have completed my duty OCONUS?

Yes, once you have completed your duty OCONUS as specified in your service agreement, your agency must pay one-way transportation expenses for you, for your family member(s), and for your household goods.

41 CFR 302-3.300 (2019) (FTR 302-3.300). Under the Joint Travel Regulations (JTR), which also apply to claimant, “[a] civilian employee is authorized travel and transportation allowances to the actual residence upon separation from Government service if the civilian employee has resigned or been separated involuntarily.” JTR 054809-A.1 (Sept. 2020).

The Army erroneously contends that claimant is not entitled to return travel expenses because she incurred travel expenses before she received her travel orders and she lacked a service agreement. Under FTR 302-3.300, which is a legislative rule, an employee who has served twelve months at an OCONUS PDS is entitled to reimbursement for the cost of return travel even without travel orders. *See Christopher G. Cover*, CBCA 3875-RELO, 15-1 BCA ¶ 35,892, at 175,465 (citing *Matthew C. Hawk*, CBCA 3832-RELO, 14-1 BCA ¶ 35,635; *William G. Sterling*, CBCA 3424-RELO, 13 BCA ¶ 35,438, *motion for reconsideration denied*, 14-1 BCA ¶ 35,483). An employee who has completed twelve months of service is entitled to such reimbursement without a service agreement. *Id.* (citing *Estelle C. Maldonado*, 62 Comp. Gen. 545, 552 (1983)). Claimant’s statutory right to the cost of return travel and shipment of her HHG accrued upon her completion of twelve months of OCONUS service. *See Richard Gong*, CBCA 5824-RELO, 18-1 BCA ¶ 36,997, at 180,169 (citing *Sherri L. Ellis-Smith*, CBCA 4022-RELO, 15-1 BCA ¶ 36,057, at 176,076).

The Army is correct that claimant purchased part of her airfare in violation of the Fly America Act (FAA), 49 U.S.C. § 40118. The FTR requires the use of a U.S. flag carrier by “[a]nyone whose air travel is financed by U.S. Government funds.” FTR 301-10.132. Unless travel on a non-U.S. flag carrier is authorized or subject to an exception to the FAA, the traveler is responsible for the cost of airfare on that carrier. *See, e.g., Richard W. Briggs*, CBCA 6562-TRAV, 19-1 BCA ¶ 37,456, at 181,990; *Makila James*; CBCA 5010-TRAV, 16-1 BCA 36,308, at 177,041. Claimant has not shown either an authorization or an exception to the FAA with regard to the purchase of her first airline ticket, which was on a non-U.S. flag carrier. Accordingly, claimant is only entitled to the cost of her second airline ticket, \$427.65, which was with a U.S. flag carrier, given that the Army does not contend that a fare for a lesser amount could have been obtained for direct travel from claimant’s PDS.

Finally, the Army contends that claimant is not entitled to any of her costs of return travel because she failed to follow her travel orders and undergo quarantine for fourteen

days. Claimant resigned from her position before departing her former OCONUS PDS, which is required under JTR 054809-A.1. Claimant has submitted copies of Army guidance that suggest an exemption for separating employees from quarantine, but the Board does not deem it necessary to render a determination as to whether claimant properly or improperly failed to undergo quarantine as the Board's authority does not extend to personnel matters within the Army. The fact remains that the Army has not established any legal basis under statute or regulation that would result in claimant forfeiting entitlement to all of her costs of returning to CONUS. As discussed above, entitlement to reimbursement of such costs is mandatory.

Claimant also claims per diem in the amount of \$41.25, which is the amount authorized in her orders. The Army has not shown that claimant would be entitled to a lesser amount. Claimant is entitled to that amount as part of her return travel expenses.

Claimant raises, for the first time, in her response to the agency report that she also incurred the cost of a test for COVID-19, which she took before her departure on September 29, 2020. The Board's rules require that "[a]ny claim for entitlement to travel or relocation expenses must first be filed with the claimant's own department or agency." Rule 401(c) (48 CFR 6101.401(c) (2021)). If claimant disagrees with the agency's determination, then claimant can submit her claim to the Board. *Id.*

Decision

The claim is granted to the extent that claimant is entitled to the cost of her airfare on a U.S. flag carrier from Istanbul to CONUS, \$427.65; shipment of her HHG, \$347.87; and per diem, \$41.25.

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge