



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 19, 2007

CBCA 468-TRAV

In the Matter of LARRY E. HAMILTON

Larry E. Hamilton, Jackson, WY, Claimant.

Candace Thatcher, Chief, Accounting Operations Division, Bureau of Land Management, National Business Center, Department of the Interior, Denver, CO, appearing for Department of the Interior.

GOODMAN, Board Judge.

Claimant, Larry E. Hamilton, is a retired federal employee. This case arises from an audit of his travel expenses incurred during official temporary duty (TDY) travel and his government-issued credit card statements while serving as the Director of Fire and Aviation, Bureau of Land Management (BLM), for the Department of the Interior (the agency).

Factual Background

The agency's Office of the Inspector General (IG) reviewed claimant's official travel which occurred between September 13, 2000, and May 30, 2003. In November 2004 the IG prepared a Report of Investigation (the IG report). The IG report was reviewed by the BLM National Business Center (NBC), which relied in part upon the IG staff's conclusions and issued a bill of collection to claimant in the amount of \$7505.91. The NBC seeks to collect funds for expenses incurred during or for official travel that the IG alleges were wrongfully reimbursed to claimant or otherwise paid by the agency, as detailed below. The

claimant asked one of our predecessor boards to review the agency's determination that he owes the amount sought.¹

The agency relies upon the IG report to support its bill of collection. In most instances, the agency agrees with the IG as to claimant's liability, but in some instances the agency believes that claimant is liable in a lesser amount or not liable at all. Claimant has admitted liability as to some amounts. We determine liability as to only those costs which the agency seeks to collect from the claimant.

Methodology of the IG Report

In September 2003, the IG's staff interviewed claimant, three individuals who served as his administrative assistants, and three senior agency officials who served during claimant's employment -- the Deputy Director of the BLM, the Deputy Assistant Secretary for Budget and Finance of the BLM, and the Director of the BLM. Claimant was again interviewed in February 2004. Claimant stated during the first interview that as a condition of accepting his position in 1999, with his permanent duty station (PDS) in Boise, Idaho, he had a verbal agreement with the BLM Director, the BLM Deputy Director, and the Secretary of the Interior that he could maintain a second office at his residence in Jackson, Wyoming, which he characterized as a "satellite office." However, claimant acknowledged that he understood that he was responsible for any additional costs as the result of originating his TDY travel from and returning to his residence rather than from and to his PDS.

During the interviews, claimant and the three administrative assistants who were responsible for making his travel arrangements described the procedures they used to plan his travel itineraries. They stated that they made cost comparisons to determine if TDY

¹ The agency's bill of collection states that claimant may appeal to the General Services Board of Contract Appeals (GSBCA). This case was docketed at the GSBCA on August 9, 2006, as GSBCA 16940-TRAV. That board had jurisdiction over similar cases when agencies sought to recoup allegedly wrongful reimbursement of travel expenses. *See, e.g., Janice M. Gentile*, GSBCA 14457-RELO, 99-1 BCA ¶ 30,238. On January 6, 2007, pursuant to section 847 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, the GSBCA was terminated and its cases, personnel, and other resources were transferred to the newly-established Civilian Board of Contract Appeals (CBCA). This case was docketed by the CBCA as CBCA 468-TRAV. The holdings of the GSBCA and other predecessor boards of the CBCA are binding on this Board. *Business Management Research Associates, Inc. v. General Services Administration*, CBCA 464, 07-1 BCA ¶ 33,486.

travel originating from and/or returning to his residence resulted in additional costs when compared to the same itinerary originating from and/or returning to his PDS.

According to claimant, he and his assistants determined by information requested and received from Omega Travel (Omega), the Government's travel agency during the relevant time periods, whether his travel resulted in savings or additional costs to the Government. When the information from Omega indicated that additional costs would result, he reimbursed the Government for the additional costs incurred if he chose to travel by that itinerary. It was claimant's understanding that the NBC audited his travel vouchers that were submitted after he completed his travel and no irregularities were brought to his attention before he retired.

During October through December 2003 the IG staff reviewed a total of sixty-two travel vouchers submitted for claimant's official travel expenses incurred between September 13, 2000, and March 26, 2003. Several additional vouchers were obtained directly from claimant. The IG report states that these travel vouchers and monthly statements from claimant's government-issued credit card were reviewed by comparing each travel voucher with the corresponding credit card statement against the General Services Administration contract airfare schedule in an effort to validate claimant's costs savings comparisons and identify any loss to the Government.

Conclusions of the IG Report

The IG staff reviewed claimant's travel originating from, returning to, or passing through Jackson, Wyoming. The Government's contract airfares from Boise, Idaho, were reconstructed using the GSA schedule for contract airfares. The Government contract airfare was then compared against the non-contract airfare claimant incurred for flights involving Jackson. The IG report concluded that fourteen travel vouchers detailed travel arrangements that resulted in additional costs to the Government. Eleven of these vouchers claimed cost savings to the Government for claimant's travel involving Jackson, Wyoming, but the IG's review failed to verify such a savings and calculated additional costs associated with these vouchers. Three vouchers showed only partial reimbursements by claimant for unused portions of his travel, or penalties incurred as the result of changes to non-contract airfares. According to the IG report, total additional costs associated with the fourteen vouchers were \$5131.35. Of this amount, the agency seeks to collect \$3367.84 from claimant.

In addition to travel vouchers, claimant's statements for his government-issued credit card were obtained from Bank of America for May 2000 through March 2003 and several additional monthly statements were obtained directly from claimant. The IG staff reviewed

these statements in an effort to validate all transactions and identify any charges that did not correlate to official travel expenses detailed on approved travel vouchers. Eight credit card transactions totaling \$3338.60 were identified relating to unused airline tickets in claimant's name. Three additional transactions totaling \$275 were identified relating to penalties imposed for changes to non-contract airfare flight itineraries. According to the IG report, these centrally billed credit card charges² were not recorded on any travel voucher nor was there a corresponding credit posted to claimant's government-issued credit card account. The agency alleges that these additional costs to the Government totaling \$3613.60 are due from claimant and seeks these costs from claimant in their entirety.

According to the IG report, claimant was interviewed on February 4, 2004, concerning these credit card transactions. Regarding the eight transactions related to unused airfare, claimant checked his daily planner and confirmed that the transactions were indeed for airfare not used. He was unable to explain why no credit had been issued to his government-issued credit card account for six of these transactions. During this interview, claimant advised that two of the transactions totaling \$952 had been credited to his credit card account. However, according to the IG report, the credit card statements obtained and reviewed during the investigation do not show any credits, and claimant did not produce any documents to validate his claim that a credit of \$952 had been received.

The IG report states that with regard to the three transactions totaling \$275 related to penalties imposed for the changes to non-contract airfare itineraries, claimant was uncertain about which particular itineraries had been changed which resulted in the imposition of these penalties. Claimant requested that he be allowed to conduct his own review of these transactions to determine whether his earlier cost savings calculations should be revised in an attempt to validate the cost savings calculations recorded on his travel vouchers.

Additional costs totaling \$524.27 were questioned by the IG staff and the agency seeks these costs from claimant. Claimant has admitted liability for a portion of these costs.³

² Centrally billed charges for airfare appear as charges on agency employees' government-issued credit card statements. However, employees are not reimbursed government funds to pay these charges. Instead, these charges are paid directly by the Government to the credit card company.

³ Claimant has stated in a submission to this Board that he admits liability to reimburse the agency for two charges which were billed twice on his credit card for which he was erroneously reimbursed - \$423.63 (hotel charge) and \$25.50 (parking fee).

Discussion

Claimant alleges that he had an agreement with his superiors that he could work from his residence in Jackson, Wyoming, when it was convenient for him to do so and that they agreed that if necessary he would depart from and return to his residence for official business. The existence of this agreement is not determinative of the issues in this case for several reasons. Even if this agreement existed, claimant's superiors did not have the discretion to bind the Government to pay the added costs incurred as the result of departing and returning from claimant's residence. *Robert O. Jacob*, CBCA 471-TRAV (Mar. 20, 2007). While claimant asserts he was given permission to depart from and return to his residence for official travel, he does not allege that his superiors authorized reimbursement of additional costs incurred as a result. Also, it is clear from claimant's travel orders that his official duty station was Boise, Idaho. Claimant has acknowledged that during his employment he understood that he was responsible for any additional costs as the result of originating his TDY travel from and returning to his residence rather than from his PDS. There are instances when he reimbursed the agency for additional costs resulting from travel originating from and returning to his residence. Accordingly, he acknowledged that such travel was for his personal convenience and additional costs arising therefrom were his responsibility.

Claimant's understanding of his liability is correct. The applicable Federal Travel Regulation (FTR)⁴ reads in relevant part:

How should I route my travel?

You must travel to your destination by the usually traveled route unless your agency authorizes or approves a different route as officially necessary.

41 CFR 301-10.7 (2000).

What is my liability if, for personal convenience, I travel by an indirect route or interrupt travel by a direct route.

⁴ The FTR provisions from the Code of Federal Regulations revised as of July 1, 2000, are cited herein. Any changes in these provisions through the relevant dates of claimant's travel in 2003 are noted.

Your reimbursement will be limited to the cost of travel by the direct route or on an uninterrupted basis. You will be responsible for any additional costs.

41 CFR 301-10.8.

Accordingly, any additional costs incurred by the employee for personal convenience are the responsibility of the employee.

Alleged Additional Costs for Failure to Use City-Pair Airfare

With regard to the alleged additional costs resulting from the use of non-contract airfare from claimant's residence rather than the use of government contract city-pair rates from his PDS, the following provisions of the FTR apply:

What are the basic requirements for using airlines?

The requirements for using airlines fall into three categories:

- (a) using contract carriers, when available;
- (b) using coach class service, unless premium class or first-class service is authorized;

41 CFR 301-10.106.

When must I use a contract city-pair fare?

You must always use a contract city-pair fare . . . if you are a civilian employee of an agency . . . unless one or more of the following conditions exist(s):

- (a) space or a scheduled contract flight is not available in time to accomplish the purpose of your travel, or use of contract service would require you to incur unnecessary overnight lodging costs which would increase the total cost of the trip; or
- (b) the contractor's flight schedule is inconsistent with explicit policies of your Federal department or agency with regard to scheduling travel during normal working hours; or

(c) a non-contract carrier offers a lower fare available to the general public, the use of which will result in a lower trip cost to the Government, to include the combined costs of transportation, lodging, meals, and related expenses.

NOTE TO PARAGRAPH (c): This exception does not apply if the contract carrier offers a comparable fare and has seats available at that fare, or if the lower fare offered by a noncontract carrier is restricted to Government and military travelers on official business and may only be purchased with a GTR [government transportation request], contractor-issued charge card, or centrally billed account

41 CFR 301-10.107.

Are there other situations when I may use a non-contract fare?

You may also use a non-contract fare . . . in the following circumstances:

(a) Your agency determines prior to your travel that this type of service is practical and economical to the Government; and

(b) In the case of a fare that is restricted or has specific eligibility requirements, you know or reasonably can anticipate, based on the travel as planned, that you will use the ticket.

41 CFR 301-10.108.⁵

⁵ This provision was amended on September 13, 2002, to read in a substantially similar manner:

What requirements must be met to use a non-contract fare?

Before purchasing a non-contract fare--

(a) You must--

(1) Meet one of the requirements for exceptions listed in § 301-10.107;

and

(2) If the non-contract fare is non-refundable, restricted or has specific eligibility requirements, you must know or reasonably anticipate, based on your planned trip, that you will use the ticket.

(b) Your agency must determine that the proposed non-contract transportation is practical and cost effective for the Government.

What is my liability for unauthorized use of a non-contract carrier when contract service is available and I do not meet one of the exceptions for required use?

Any additional costs or penalties incurred by you resulting from unauthorized use of non-contract service are borne by you.

41 CFR 301-10.109.

The IG report references these regulations and states with regard to the travel vouchers that allegedly contained additional costs:

On . . . the travel vouchers identified, Hamilton's use of . . . non-contract airfare resulted in higher trip costs because the . . . airfare was more expensive than the government contract airfare. Pursuant to 41 CFR 301-10.109, any additional costs resulting from the use of non-contract air service for the employee's own personal preference or convenience is the traveler's responsibility.

As detailed above, the FTR requires an employee to use a contract city-pair fare unless certain exceptions exist. Claimant understood it was his obligation to pay additional costs above those he would have incurred had the travel originated and/or concluded at his PDS in Boise, Idaho. He alleges that all travel procedures were followed, that he made adequate cost comparisons, that he determined when excess costs were incurred, and that he was entitled to all costs that were reimbursed to him. While claimant asserts that he and his administrative assistants relied on Omega for information sufficient to make a determination as to cost comparisons and cost savings under the exceptions above, neither he nor his assistants took sufficient action to comply with the regulatory requirements to justify the alleged cost savings and exceptions. If Omega did in fact have access to information which would justify the use of fares other than the contract city-pair fare (e.g., lack of space on contract carrier flights, or the fact that the contractor's flight schedule was inconsistent with explicit policies of the agency with regard to scheduling travel during normal working hours or inconsistent with claimant's work schedule), this information should have also been documented and attached to the travel voucher.

41 CFR 301-10.108 (2003).

There is no evidence on most of the travel vouchers in question that cost comparisons were made and cost savings were actually achieved based upon facts justifying the regulatory exceptions. There is also no indication on these travel vouchers that prior to travel the agency determined that the use of the non-contract airfare was practical and economical to the Government. Accordingly, claimant is therefore responsible for the additional costs which the agency seeks to collect on the following travel vouchers:⁶

Travel Voucher #2	\$262.50
Travel Voucher #10	606.60 ⁷
Travel Voucher #11	439.50
Travel Voucher #12	612.30
Travel Voucher #20	272.34
Travel Voucher #23	116.60 ⁸
Travel Voucher #24	90.20
Travel Voucher #25	90.20
Travel Voucher #36	160.70

⁶ With regard to travel voucher # 7, the agency disagrees with the IG calculation of additional costs in the amount of \$1114.20, stating that it was reasonable that claimant should originate his TDY from his residence under the circumstances described in the IG report and that this itinerary resulted in cost savings. However, the agency seeks additional costs of \$531.20, without indicating how these additional costs were calculated, and contradicting its own conclusion that the itinerary resulted in cost savings. We do not find claimant liable for additional costs with regard to this voucher.

With regard to travel voucher #30, the description in the IG report does not appear to allege additional costs due from claimant. The agency's bill of collection details \$190.70 due with an explanation that does not appear to describe any circumstances detailed in the travel voucher. We find the bill of collection does not support the costs sought by the agency.

⁷ These additional costs were the result of centrally billed airfare for the itinerary that were not included on the travel voucher.

⁸ While claimant alleges he made a cost comparison of rates from his PDS to Washington, D.C., he based his savings on rates to Washington National while he actually traveled to Washington Dulles. The additional costs were calculated using the fare to his actual destination.

Alleged Inconsistencies in Claimant's Government-Issued Credit Card Transactions

The IG report identified and the agency bill of collection seeks to recover from claimant what was characterized as \$3338.60 of unused credits for airfare billed to claimant's government-issued credit card. Applicable provisions of the FTR require that an employee submit any unused Government Transportation Requests (GTRs), ticket coupons, e-tickets, or refund applications to the agency in accordance with agency procedures. 41 CFR 301-10.114.⁹ An employee is not authorized to receive a refund, credit, or any other negotiable document from a carrier for unfurnished services or any portion of an unused ticket issued in exchange for a GTR or billed to an agency's centrally billed account. However, any charge billed directly to the employee's government-issued credit card should be credited to that account. 41 CFR 301-10.115.

While the IG report states that claimant asserted that charges on his government-issued credit card bill were reconciled monthly with his travel vouchers, none of these charges for airfare are claimed on travel vouchers. The itineraries for the following charges are similar to itineraries that appear on travel vouchers for which other airfare was incurred, but claimant offers no explanation as to why these second sets of similar tickets were billed to his government-issued credit card. The credit card statements indicate that claimant was the holder of these tickets. Claimant confirmed that he did not use these tickets. There is no evidence that the costs of any of these unused tickets were credited to claimant's government-issued credit card. We conclude that claimant made these reservations for his personal convenience and therefore owes the agency the costs incurred.

Alaska Air	\$290.45
Alaska Air	127.02
Delta Air	477.50
Southwest	211.50

With regard to the following charges, claimant states that he made arrangements for the itineraries but was unable to attend the meetings that he planned to attend because of scheduling conflicts. There is no evidence that the costs of any of these unused tickets were credited to claimant's government-issued credit card or that claimant made any attempt to have such tickets credited. Claimant therefore owes the agency the costs incurred.

American	\$96.25
Northwest	1183.88

⁹ This provision was amended on September 12, 2002, to include "unused e-tickets." 41 CFR 301-10.114 (2003).

According to the IG staff's interview with claimant on February 11, 2004, claimant asserted at that time that his government-issued credit card had "recently" received credits for the following amounts:

United	\$718.50
Big Sky	233.50

If claimant can prove that these credits have been received, he does not owe the agency these amounts. Otherwise, he is obligated to reimburse the agency for these amounts.

Three penalty charges totaling \$275 for canceling non-contract airfare were noted with no corresponding travel voucher. The IG report states that with regard to these transactions, claimant was uncertain about which particular tickets had been changed which resulted in the imposition of these penalties. Claimant requested that he be allowed to conduct his own review of these transactions to determine whether his earlier cost savings calculations should be recalculated in an attempt to validate the cost savings calculations recorded on his travel vouchers. Claimant has offered no additional information concerning these penalties. As he made the reservations using non-contract airfare for his personal convenience, he is obligated to reimburse the agency for these costs.

Erroneous Reimbursement for Occupancy Tax

The IG staff identified five instances where claimant erroneously sought reimbursement of occupancy tax for tax-exempt lodgings during official travel - four instances for \$10.08 each totaling \$40.32 and another instance for \$35.02. According to the IG report, claimant admitted liability for these amounts. While claimant did not admit liability in his submission to this Board, he is obligated to reimburse these amounts to the agency as his lodging charges were tax exempt.

Decision

Claimant is obligated to reimburse the agency for the amounts included in the agency's bill of collection that we have determined he is obligated to pay and for those amounts for which he has admitted liability. With regard to the amounts for which claimant

asserts he has received credit on his government-issued credit card, claimant must prove to the agency that such credits have been received in order to relieve himself of liability for those costs.

ALLAN H. GOODMAN
Board Judge