



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 18, 2011

CBCA 2371-TRAV

In the Matter of MARK E. BYERS and PAMELA S. DIAZ

Mark E. Byers and Pamela S. Diaz, Atlanta, GA, Claimants.

Barry Taylor, Office of Travel Management, Financial Management Office, Centers for Disease Control and Prevention, Atlanta, GA, appearing for Department of Health and Human Services.

WALTERS, Board Judge.

Claimants, Mark E. Byers and Pamela S. Diaz, challenge their agency's disallowance of per diem lodging costs incurred upon their return from official travel. For the reasons explained below, their claims are granted.

Background

Claimants, employees of the Centers for Disease Control and Prevention (CDC) in Atlanta, Georgia, had been on official CDC business in Galveston, Texas, in January 2011 and had returned to Atlanta via their scheduled flight from Houston. Unfortunately, Atlanta was experiencing a blizzard with severe icing conditions at the time and neither found it possible to make it back safely to their respective homes from the Atlanta airport. In identically worded letters addressed to the Board, they both describe the situation as follows:

[I]cing conditions were worse than anticipated and . . . road conditions had greatly deteriorated. As a result, there were no taxis available at the airport (except to airport hotels), the airport parking garage was closed, and the subway was running on a severely reduced schedule. Since there was no safe

way possible to get home due to the lack of transportation and dangerous road conditions, the only option was to secure a hotel room located near the subway line.

Both took hotel rooms for a night and incurred costs for such lodging. Both indicate that, had they remained in Texas rather than proceeding home to Atlanta on their scheduled flight, it was likely that they would have had to spend several additional days in Texas, incurring even more cost for the Government, since they would have had to contend with a severe “transportation bottleneck in Atlanta,” with thousands of others seeking to reschedule their flight reservations. In processing their travel claims, however, the agency disallowed the amounts sought for their hotel costs in Atlanta, based on the general prohibition against payment of per diem for local travel, i.e., travel within fifty miles of the permanent duty station (PDS). The agency cites to a narrow exception against such a prohibition under Department of Health and Human Services travel guidance, but notes that the circumstances the claimants faced did not qualify for such exceptional treatment.¹

¹ The Department of Health and Human Services (HHS) Travel Manual provides:

4.3.1.1. Exception. Per diem will not be paid in the local travel area as defined in #2 above unless the following narrow exemption [sic] applies, in which all criteria must be met:

1. The **local travel** is not being performed to attend or participate in a conference, meeting, or training for which the agency had any influence over or input into the site selection; and
2. The **local travel assignment** will last at least three consecutive nights and four days and entail at least nine and one-half consecutive hours of work per day on each of those days; and
3. It is clearly within the Government’s interest, for accomplishment of its mission, to permit a particular employee to stay overnight at the site of the **local travel assignment** on one or more of those night(s), not necessarily consecutive; and
4. That employee would be required to perform an extensive amount of driving (defined as at least 80 miles) each way between his/her residence and the site of the local travel assignment, on a daily basis (in a carpool

Claimants disagree with the disallowance, arguing that “there was no way possible to return home safely during a blizzard with severe icing conditions, roads closed and the parking garage at the Atlanta Airport closed (where [both of their respective] cars [were] parked) to get home safely.” The CDC seeks our guidance, stating that it “is willing to pay [the claims] if the board concludes that such payment would not violate Department Policy or is otherwise appropriate.”

Discussion

Regarding the recoverability of per diem, including reimbursement for lodging costs, the Federal Travel Regulation (FTR) currently provides:

§ 301-11.1 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.

....

§ 301-11.9 When does per diem or actual expense entitlement start/stop?

situation, each employee must live at least 80 miles from the TDY [temporary duty] site to qualify for this exception); and

5. Significant safety issues are raised by the combination of the extended hours of work and the extensive amount of driving for the employee performing this **local travel assignment**.

Note: Once all of the above criteria have been met, a travel authorization must be approved to authorize the applicable travel and per diem expenses. (Emphasis added.)

Your per diem or actual expense entitlement starts on the day you depart your home, office or other authorized point and ends on the day you return to your home, office or other authorized point.

41 CFR 301-11.1, -11.9 (2010). Under these FTR provisions, the claimants' per diem allowance had not ceased simply because their airplane had touched ground at the Atlanta airport. The agency does not contest that the weather conditions prevented their returning to their respective homes until the next day. Under the regulation, they were entitled to per diem reimbursement (including reimbursement for lodging) until the day they were able to return to their homes, i.e., the authorized points for return under their travel orders.

This was unlike the situation where an employee is on official travel and reaches his permanent duty station but, though it is possible to continue, on his own, elects to take a hotel room rather than driving from his permanent duty station (PDS) to his home. *Cf. Herman T. Whitworth*, GSBCA 14401-TRAV, 98-2 BCA ¶ 29,804. This case is also distinguishable from those cases where per diem has been denied to employees within the vicinity of their PDSs who were never (or who had ceased being) on official travel that took them away from their duty stations. *See Jerry B. Dulworth*, GSBCA 16035-TRAV, et al., 03-2 BCA ¶ 32,312 (where travel was to begin and end at the PDS, employee who had been on official travel was denied reimbursement for a hotel room taken after arriving back at the PDS, rather than driving another seventy-five miles to his home); *Leo McManus*, GSBCA 15548-TRAV, et al., 01-2 BCA ¶ 31,507 (though purportedly authorized in travel orders, eleven employees were denied reimbursement for lodging and other per diem costs incurred to stay overnight at a hotel local to their PDS, so as to permit the conduct of early morning and late evening meetings, since they were not on official travel away from their duty station); *Murray Lumpkin*, GSBCA 14513-TRAV, 98-2 BCA ¶ 30,042 (Rockville, Maryland based employee who lived in nearby Leesburg, Virginia, was denied reimbursement for expenses incurred in taking a hotel room in Rockville, due to threatened icy conditions, in order to assure that he could conduct a training session the next morning at his duty station in Rockville). Likewise, in the present case, the claimants cannot be said to have been on a “**local travel assignment.**” The HHS guidance cited by the agency thus would have no applicability.

Lodging reimbursement here would be appropriate, since weather conditions made it impossible for claimants to do anything other than continue on official travel until they were able to reach their homes.

Decision

The claims are granted.

RICHARD C. WALTERS
Board Judge