



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 28, 2023

CBCA 7582-TRAV

In the Matter of MARK S.

Mark S., Claimant.

Christina I. SamNiego, Accounting Chief, Office of Finance Services, Pacific Islands Healthcare System, Department of Veterans Affairs, Honolulu, HI, appearing for Department of Veterans Affairs.

RUSSELL, Board Judge.

Claimant, Mark S., an employee with the Department of Veterans Affairs (VA or agency), disputes the VA's decision denying him reimbursement of \$1021.50 in travel expenses for days on which he was on travel between twelve to twenty-four hours. Relying on Federal Travel Regulation (FTR) 301-11.101 (41 CFR 301-11.101 (2022)), claimant argues that he is entitled to "75% per diem" for these travel days. The agency failed to respond to the claim despite the Board granting the agency multiple opportunities to respond.¹ For the reasons stated below, the Board grants the claim.

¹ The Board's notice of docketing, dated November 22, 2022, stated that, pursuant to Board Rule 403 (48 CFR 6104.403 (2021)), the agency's response to this claim was due on December 22, 2022. On January 17, 2023, in response to a telephone call from the Clerk of the Board, the agency representative emailed the Clerk of the Board stating that the agency would provide a response to the claim as soon as possible. The agency failed to do so. The agency also failed to respond to three Board orders—issued March 6, March 24, and May 22, 2023—all establishing deadlines for the agency to respond to the claim. The agency missed the final deadline of May 30, 2023.

Discussion

Between June 21 and October 20, 2022, claimant submitted fourteen travel vouchers for reimbursement of expenses for travel days that exceeded twelve hours but were less than twenty-four hours. In the claim, claimant noted that under both 41 CFR 301-11.101 and the VA's travel policy, employees are to be paid 75% per diem under these circumstances. However, his employer (referred to as "the local facility" in claimant's documents) reduced the per diem rate to incidentals only, pursuant to its own policy. The facility subsequently modified its policy on November 17, 2022, announcing that it would pay the "75% per diem" rate for travel days over twelve, but under twenty-four hours, going forward but would not apply this revised policy retroactively.

Claimant is correct that he is entitled to reimbursement of his travel expenses consistent with 41 CFR 301-11.101 which states that when travel is "[m]ore than 12 but less than 24 hours" an employee's travel allowance is "75 percent of the applicable M&IE [meals and incidental expenses] rate for each calendar day [that the employee is] in a travel status." The VA policy provision provided by claimant in support of his claim does not address this FTR provision but clearly authorizes per diem even when the authorized travel is between twelve and twenty-four hours. Claimant is entitled to reimbursement of his travel expenses. Claimant's local facility erred in denying his claim based on its own policy which was contrary to the FTR. *Alphonso S. Hamilton*, CBCA 5109-RELO, 16-1 BCA ¶ 36,441, at 177,607 (The FTR "has the force of law and must be followed.").

Although claimant states that he is entitled to \$1021.50, the Board is unable to confirm this amount from the voucher history documents submitted. Nevertheless, the agency must reimburse this amount, if accurate, based on claimant's approved travel vouchers or, if not accurate, the amount calculated consistent with 41 CFR 301-11.101.

Decision

The claim is granted with the amount to be determined by the agency pursuant to 41 CFR 301-11.101.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge