



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 27, 2012

CBCA 2762-TRAV

In the Matter of TIMOTHY J. HURLEY

Timothy J. Hurley, Lexington Park, MD, Claimant.

Bonnie Petree, Travel Department Supervisor, Naval Air Warfare Center Aircraft Division, Patuxent River, MD, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

When Timothy J. Hurley was assigned to travel from Patuxent River, Maryland, to Boston, Massachusetts, in August 2011, he spent the first night of his trip in a hotel near Baltimore Washington International Airport. He maintains that under the circumstances, his employer, the Department of the Navy, should pay for the cost of the hotel room. The Navy believes that it does not have the authority to do so.

Mr. Hurley explains, without contradiction from the Navy, that the afternoon flight on which he was scheduled to leave the airport was delayed several times and ultimately canceled. Eventually, at 10 p.m., the airline re-booked him on the next flight to Boston, leaving at 8:20 the next morning.

At that point, Mr. Hurley says, he had to make a decision. Driving round-trip to his home would take three hours. If he drove home, he would have precious little time to sleep before driving back to the airport for his flight. Alternatively, he could spend the night at an airport hotel and get a decent rest. He opted for the latter course of action, given that the purpose of the trip was to brief high-level personnel the next morning on a project for which he was responsible. He tells us that he called his supervisor to ask for permission to stay at a hotel (though he does not report the supervisor's response).

The Navy denied Mr. Hurley's request for reimbursement for the cost of the hotel room. It maintains that its refusal is mandated by paragraph C4552-C.1.a of the Defense Department's Joint Travel Regulations (JTR). This paragraph states, "Per diem cannot be authorized or paid within the PDS [permanent duty station] limits . . . or at, or within the vicinity of, the place of abode (residence) from which the employee commutes daily to the official station except as provided in par. C4552-D." Paragraph C4552-D pertains to temporary duty at places near an employee's permanent duty station and is not relevant to this dispute. Consequently, the Navy asserts that there is no exception to the rule that per diem cannot be authorized or paid for employee travel within an employee's permanent duty station or at or near the employee's residence.

The agency reads JTR C4552-C.1.a too narrowly. The Federal Travel Regulation (FTR), from which the JTR derives, allows government payment of per diem expenses (including the costs of hotel rooms) when an employee performs official travel away from his official station, incurs per diem expenses while performing official travel, and is in a travel status for more than twelve hours. 41 CFR 301-11.1 (2011). The FTR also provides (as does the JTR) that an employee "must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business." *Id.* 301-2.3; *see also* JTR C1058-1. We have been guided by these rules when considering whether an employee should be reimbursed for per diem expenses incurred at his permanent duty station.

We have held that when an employee on official travel arrives at an airport near his duty station, but is prevented by severe weather from driving from the airport to his home or office, reimbursement is appropriate; in these circumstances, staying at an airport hotel until roads are passable is a necessity. *Mark E. Byers*, CBCA 2371-TRAV, 11-1 BCA ¶ 34,763. Similarly, when an employee on official travel arrives at an airport near her duty station, after a flight delay, in the wee hours of the morning, and has valid concerns for the safety of herself and others were she to make a long drive home, staying at an airport hotel for the night is prudent. *Diane M. Balderson*, CBCA 2416-TRAV, 11-2 BCA ¶ 34,801; *see also Michael N. Heinz*, CBCA 2696-TRAV, 12-1 BCA ¶ 34,999 (airport hotel stay following very late arrival to avoid airport closures due to hurricane found reasonable where long drive home would pose safety concerns). On the other hand, when an employee's trip is delayed because his flight is canceled on one evening and he secures passage on a flight leaving the next evening, there is plenty of time for the employee to drive home, sleep, and return to the airport, so the Government should not pay for a room at an airport hotel. *Dane Hanson*, CBCA 2666-TRAV (May 21, 2012).

We note that the writers of the JTR have also been flexible in making reasonable exceptions to the no-per-diem-at-the-permanent-duty-station principle enunciated in JTR C4552-C.1.a. At the time Mr. Hurley traveled (and now), a JTR provision which follows that

paragraph authorized payment of per diem expenses at an employee's permanent duty station under certain very limited conditions: "Per diem at the PDS must be paid if an employee's travel status is uninterrupted by a brief stay in the PDS vicinity (i.e., usual routing between two TDY [temporary duty] locations has the employee passing back through the PDS airport and remaining overnight at a hotel ICW [in connection with] a transportation connection as opposed to going 'home' or going to the workplace), *and* the employee is in transit from one TDY site to another." JTR C4554-C.2.b. Following our decision regarding severe weather conditions, the JTR was amended, effective October 1, 2011, to say that "[p]er diem ICW transportation delays at the PDS may be paid in certain extremely limited weather-related circumstances beyond the traveler's control after return to the PDS vicinity from the TDY location." JTR C4552-C.2.c (Oct. 1, 2011).

The principle governing all of these situations is that when, in the course of official travel, an employee encounters extraordinary, unexpected circumstances which make prudent spending a night at a hotel at an airport rather than venturing a considerable distance to the employee's home or office, the Government – for whose benefit the employee is making the trip – should reimburse the employee for the cost of the hotel room and other per diem expenses. Applying this principle to Mr. Hurley's situation, we hold that the Navy should absorb these costs, as long as they are within the maximum rates established by the General Services Administration for the location where he stayed. *See* 41 CFR 301-11.6. Faced with a flight cancellation, the employee rescheduled his flight for as early as possible the next day in order to complete his mission of making a morning presentation in another city. Putting the mission first, however, meant that he would not have sufficient time to drive home, get a decent night's sleep, and return to the airport for the newly-scheduled flight. Spending the night at the airport was the only prudent option available to him.

STEPHEN M. DANIELS
Board Judge