UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 29, 2010

CBCA 1812-TRAV

In the Matter of ROBERT R. DEVISSER

Robert R. Devisser, APO American Embassy, Bogota, Colombia, Claimant.

Judy Hughes, Standards and Compliance, Defense Finance and Accounting Service, Columbus, OH, appearing for Defense Finance and Accounting Service.

POLLACK, Board Judge.

Robert Devisser (claimant), a civilian employee of the Department of Defense, whose permanent duty station (PDS) at the time of the travel was Yokosuka, Japan, seeks review of the denial of his claim by the Defense Finance and Accounting Service (DFAS). DFAS denied his claim for reimbursement of per diem for his dependents (from December 14 to 27, 2008), related to his travel from his PDS to a new position with the Department of the Army (Army) in Bogota, Colombia. The claim centers on DFAS's denial of per diem for his family during the above period, when Mr. Devisser and his family were required, as part of the travel from Japan to Colombia, to first proceed to Ft. Sam Houston, in San Antonio, Texas. There, he was required by his orders to undertake training and orientation, both of which were mandatory before he and his family could enter Colombia and thus complete the authorized travel. The issuing authority has supported Mr. Devisser's claim. The travel in issue is subject to the Joint Travel Regulations (JTR), a set of rules which applies to Department of Defense civilian personnel.

The orders the Army provided Mr. Devisser authorized concurrent dependent travel, and further authorized temporary duty (TDY) for Mr. Devisser at Ft. Sam Houston. The orders specified that the TDY was "enroute" to his new duty station. Mr. Devisser was told that per diem expenses would be paid for his dependents, and the per diem block for dependents was checked on his orders.

Mr. Devisser did not choose the route to Colombia. Rather, he was directed and required to go by way of Ft. Sam Houston, as a precondition to being able to proceed with his family to the final destination. He was being attached to the United State Embassy in Bogota, and State Department requirements made the stop and orientation/training mandatory before he could enter Colombia. Until he completed the TDY, he could not secure a visa. Moreover, his family could not secure a visa until he had one. Accordingly, neither he nor his family could complete the ordered travel, absent proceeding by the route dictated and stopping for the training.

Upon completing his training and travel to Colombia, he submitted his claim for reimbursement. It included the request for reimbursement for dependent per diem for the time spent in Texas. DFAS reviewed the claim and determined that Mr. Devisser was not entitled to be reimbursed for the per diem costs of his dependents. It based its denial on its reading of language in the JTR (set out below), covering permanent duty travel-dependent travel and transportation. DFAS concluded that the regulations prohibited payment in this case for several reasons, those being that the regulations prohibited payment of dependent per diem in conjunction with employee TDY, and further that allowances were not payable unless the travel was both uninterrupted and proceeded by a "usual route." DFAS charged that the stop for TDY created an interruption in the travel and further caused the travel to deviate from the "usually traveled route." Mr. Devisser disagrees, pointing out that the route and duration were not his choice, but rather, were dictated by the Army and entry criteria for Colombia.

Mr. Devisser acknowledged that it might have been possible for him to have gone alone to Texas and then returned to Japan once he had a visa. However, as he pointed out, that was not the process authorized by the Army and would have clearly delayed his arrival in Colombia. Additionally, returning to Japan would have presented a number of potential problems and hurdles, delaying and possibly jeopardizing his family's entry into Colombia. As put forth by the Army, the only practical approach was to have his family accompany him, as the orders dictated.

Set out below is the pertinent section of JTR C5100 upon which DFAS relied:

C5100 ELIGIBILITY

A. General

1. Appropriate dependent travel and transportation allowances may be authorized/approved ICW [in connection with] PCSs [permanent changes of station] worldwide.

> 2. Dependent travel and transportation allowances are based on the employee's travel authorization and are subject to the conditions and restrictions in Chapter 5, Part C.
>
> 3. Except as in Chapter 6 [evacuation travel], these allowances are limited to those allowable for **uninterrupted travel** by the authorized transportation mode over **a usually traveled route** between the old and new PDS. [emphasis added]
>
> 4. There is no authority for any additional travel and transportation allowances for a dependent who accompanies an employee on TDY assignment, except for transportation authorized under pars. C4500-B and C4500-C. [The last-cited paragraphs address a matter not relevant here, allowances for employees attending training courses in the area of their PDSS.]

Discussion

The JTR provision cited above provides at paragraphs 1 and 2 that dependent travel and reimbursement may be authorized as part of PCS travel for an employee. However, under paragraph 3, reimbursement allowances for dependents are "limited to those allowable for uninterrupted travel by the authorized transportation mode over a usually traveled route between the old and new PDS." Accordingly, travel deviations in proceeding from one location to another can result in denial or limitations on reimbursement. That said, where there is compliance with the requirements of paragraph 3, and where no other restriction is applicable, a claimant should be reimbursed for his dependent's expenses during the time needed to proceed from one PDS to another.

DFAS has concluded that in this case, the employee is not entitled to dependent reimbursement for the time period in issue, citing two reasons. First, DFAS contends that the claimant and his family did not meet the requirement of proceeding with uninterrupted travel over a usually traveled route. Essentially, DFAS says that to qualify for travel over the usual route, claimant's family had to proceed directly from Japan to Colombia. As to the requirement for travel not to be interrupted, DFAS found that the stop at Fort Sam Houston, regardless of the purpose and direction, constituted an interruption within the contemplation of the regulation.

We find that DFAS is incorrect in its conclusion in reading the cited regulations to hold that the travel did not qualify for reimbursement. The terms relied upon by DFAS, "interrupted" and "usual route," are words that have previously been interpreted by our predecessor board. In *Daniel A. Crittenden*, GSBCA 16144-TRAV, 04-1 BCA ¶ 32,470 (2003), the board concluded that an employee's travel route was not interrupted for purposes of per diem allowance, where the decision to stop enroute was not made by the claimant, but instead dictated by the employing agency. In *Delner Franklin-Thomas*, GSBCA 15905-TRAV, 03-1 BCA ¶ 32,126 (2002), the board found that where a stop was authorized by the employee's agency and was necessary in order for her to conduct business, the flights did not involve indirect routing for the employee's convenience and as such was a regular route.

In both cases cited above, the board was recognizing that the overriding purpose of the prohibitions was to disallow or restrict reimbursement to an employee when the costs were being incurred for the employee's convenience, but to allow reimbursement when the employee's actions and costs were the result of agency directive and for the agency's benefit. The situation presented by the claimant here is one in which the route taken was dictated by the Government, not a situation where the route and stop were being taken for Mr. Devisser and his family's convenience. As the Army indicated, the itinerary here was the only practical alternative. Accordingly, we find that the circumstances in this case are not barred by the restrictions in paragraph 3.

Having found that the reimbursement for dependents in this case is not disqualified under paragraph 3, we now turn to the second basis for DFAS's denial. DFAS contends that paragraph 4 of the same JTR section independently bars payment for reimbursement, and more important, as applied by DFAS, serves to negate or trump reimbursement that would otherwise be appropriate and due under paragraph 3.

Paragraph 4, relied upon by DFAS, provides that "there is no authority for any additional travel and transportation allowances for a dependent who accompanies an employee on TDY except for transportation authorized under pars. C4500-B and C4500-C." DFAS reads "no authority" to provide that on days that TDY is performed (even as a segment of more encompassing travel), the regulation requires that no dependent reimbursement be paid.

We disagree and find that under the facts of this case, DFAS is not properly applying the regulation. We acknowledge that the language in paragraph 4 prohibits reimbursement for any additional dependent travel and transportation allowances associated with an employee's TDY. However, we do not go as far as DFAS and do not find that paragraph 4 negates reimbursement that is otherwise properly payable (here payable under paragraph 2 of the regulation). In coming to our conclusion, we focus on the wording "additional allowances." We read the regulatory prohibition to prohibit allowances associated with TDY

which would be in addition to that to which the dependent is already entitled under another provision. If the intent of the regulation were to deny all allowances, even those to which a party would otherwise be entitled, then we would have expected the regulation to provide for "all" allowances and not simply for "additional" allowances.

In reading the language as we do, we point out that we continue to understand paragraph 4 of the regulation to prohibit dependent reimbursement, where the purpose and genesis of the travel was TDY travel and not some other authorized purpose. As to situations, such as that here, where the TDY is associated with another authorized purpose, we decline to draw a bright line. That needs to be dealt with on a case by case basis.

Here, the claimant was engaged in moving from one PDS to another and did so as dictated by the Army. Because of the unique situation of having to secure training before being able to proceed with his family to Colombia, and having that training directed and encompassed within his change of station orders, we find that in this case, the claimant is entitled to the denied reimbursement.

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HOWARD A. POLLACK
Board Judge