



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 12, 2008

CBCA 1271-TRAV

In the Matter of MICHAEL A. STIRBER

Michael A. Stirber, Phoenix, AZ, Claimant.

Susan L. Lovell, Office of the General Counsel, Defense Contract Audit Agency, Fort Belvoir, VA, appearing for Department of Defense.

GILMORE, Board Judge.

Claimant, Michael A. Stirber, asks the Board to review the determination of the Defense Contract Audit Agency (DCAA) that he owes the agency \$7735.01 for amounts improperly paid to him for local travel for the period June 2003 through November 2006.

Background

Claimant is a senior auditor with the Department of Defense, DCAA, and has been employed with the agency for twenty-five years. In August 1987, Mr. Stirber was transferred from California to a DCAA office in Chandler, Arizona. He purchased a home in Phoenix, Arizona, near the Chandler office. In 1993, the Chandler office was closed and DCAA created two new offices--a small office in Scottsdale, Arizona, and a larger one in Litchfield Park, Arizona. Mr. Stirber was assigned to the Litchfield Park office, which was forty miles from his home. For approximately ten years, Mr. Stirber commuted eighty miles round-trip to the DCAA Litchfield Park office. In May 2003, he sought to have his office transferred closer to his home, because the long commute was becoming a hardship to him and his family. He requested a transfer to the Field Detachment (FD) office in Scottsdale, Arizona, about twenty miles from his home, but this request was denied by both his supervisor and the branch manager. On May 5, 2003, Mr. Stirber submitted a written transfer request to the FD Director requesting a transfer from the South Central Branch FD office (Litchfield Park) to

the Central Region, Arizona Branch office. The Director did not respond to his letter, but his branch manager, on May 13, 2003, stated in an e-mail message to him that his request to transfer to the Central Region, Arizona Branch office had been denied--that the Central Region is overstaffed in the Arizona area -- and then informed him in that e-mail message as follows:

We will issue a change of duty station assigning you to Scottsdale effective June 1, 2003. You realize that you do not have work in Scottsdale and will need to continue with your assigned contractors located in Phoenix and Tucson. Additional briefings will be requested for Tucson. You, not Dawn, will be expected to continue supporting the Litchfield office at least twice a week depending on workload. As you know from prior discussions, the contractor cannot provide additional space in Scottsdale.

We depend on your professionalism to make this a smooth transition. Your assistance will be required for destroying files and classified documents in July 2003.

Based on this e-mail message, Mr. Stirber considered his permanent duty station (PDS) to be the Scottsdale office as of June 1, 2003. However, he continued to go to the Litchfield Park office practically every day, and rarely went to the Scottsdale office because there was no office space provided for him at that site. He then began to bill the agency for local travel from his residence to Litchfield Park, which he considered to be his alternate work site, deducting the twenty miles from his residence to the Scottsdale office.

From June 1, 2003, through November 29, 2006, the period in question, Mr. Stirber never received written orders authorizing a change of duty station. The record is not clear as to whether his supervisors ever prepared the necessary forms or whether they were signed by the appropriate personnel. He contends instead that the May 13, 2003, e-mail message from the branch manager was the document that authorized the change in his PDS.

Mr. Stirber submitted travel costs from his residence to the Litchfield Park office (with mileage deduction for the miles from his residence to the Scottsdale office) for most of the weekdays during the period of June 2003 through November 2006. Mr. Stirber's supervisors at the Litchfield Park office approved the relevant local travel vouchers. He was paid a total of \$7735.01 for these daily trips. No questions were raised about his travel reimbursements until February of 2007, after he had been assigned a new supervisor and branch manager. They began to question the travel costs, based upon his reporting to duty almost daily to the Litchfield Park office. After an investigation, DCAA determined that Mr. Stirber's PDS was the Litchfield Park office and that he had submitted false travel claims

in violation of the Joint Travel Regulations. DCAA subsequently sent a letter to Mr. Stirber stating that he had been overpaid for travel in the amount of \$7735.01, and that he must repay that amount. After his request for reconsideration was denied, he asked the Board to review DCAA's denial of his travel expenses.

Discussion

The issue here is whether on June 1, 2003, Mr. Stirber's official duty station was changed from Litchfield Park, Arizona, to Scottsdale, Arizona. The evidence shows that it was not. Mr. Stirber contends that the e-mail message he received from his branch manager stating that "[w]e will issue you a change of duty station assigning you to Scottsdale, effective June 1, 2003," was sufficient to effectuate the duty station change and that it is irrelevant that he did not receive official written orders authorizing the change, citing *Frank A. Conforti*, CBCA 828-TRAV, 07-2 BCA ¶ 33,693. Mr. Stirber is correct to the extent that the agency's records are not conclusive proof of an employee's PDS. *Id.* at 166,786 (citing *James D. Fernwood*, GSBCA 15104-RELO, 00-1 BCA ¶ 30,658 (1999)). An employee's PDS is determined from the orders directing the assignment, the duration of the assignment, the nature of the duties performed, and the location where the employee expects, and is expected, to spend the greater part of his or her time. *Id.* Here, even though Mr. Stirber's branch manager advised him that he would be reassigned to Scottsdale, his work pattern never changed. He continued to go to the Litchfield Park office; he continued under the supervision of the Litchfield Park supervisor and branch manager; and he rarely went to the Scottsdale office. Office accommodations were not provided to him at the Scottsdale office until May 2007, when the Litchfield Park office was closed and he was assigned to the Scottsdale office. Additionally, Mr. Stirber has not disputed that the SF-50 government forms provided to him during this period listed the Litchfield Park office as his official duty station, not Scottsdale.

Mr. Stirber also contends that for three years his supervisors approved the travel vouchers and never questioned the costs. It is well settled, however, that erroneously approved travel vouchers do not entitle an employee to reimbursement in excess of statutory or regulatory entitlements. *Wendy Castineira*, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740 (1999). This is true regardless of whether the employee relied upon the approval to his or her detriment. *Marlene Lewis*, GSBCA 15431-RELO, 01-2 BCA ¶ 31,642. It appears that his supervisors were trying to accommodate his efforts to lessen the financial hardship of his daily commute. However, in reality, his workplace never changed. A mere statement by his branch manager that "we will issue you a change of duty station" is not enough to establish that a change in duty station actually occurred.

We determine that Mr. Stirber's PDS, during the period in question, was the Litchfield Park, Arizona, office. He is not entitled to be reimbursed for commuting expenses incurred between his residence and his PDS. *Freddie G. Fenton*, GSBCA 13638-TRAV, 97-1 BCA ¶ 28,712 (1996).

Decision

_____The agency determination is affirmed and the claim is denied.

BERYL S. GILMORE
Board Judge