UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 17, 2016

CBCA 5073-TRAV

In the Matter of JERRY W. PADGETT

Jerry W. Padgett, Warner Robins, GA, Claimant.

Timothy J. Ryan, Office of General Counsel, Defense Logistics Agency, New Cumberland, PA, appearing for Department of Defense.

WALTERS, Board Judge.

Claimant, Jerry W. Padgett, a civilian employee of the Department of Defense (DoD), Defense Logistics Agency (DLA), Warner Robins, Georgia, sought reconsideration of our June 29, 2016, decision in CBCA 5073-TRAV, wherein we granted a total of $108 of the $758 claimed. The request for reconsideration focused on the portion of the claim involving the daily allowance for incidental expenses (IE) during claimant's temporary duty (TDY) travel while he was based at Camp KAIA at the Kabul International Airport in Kabul, Afghanistan. For the reasons explained below, claimant has not provided sufficient additional evidence for the Board to reverse its earlier decision as to that portion and, accordingly, we deny reconsideration.

Discussion

The background regarding claimant's TDY assignment in 2014 is described in our earlier decision and need not be repeated here. The provision of the Joint Travel Regulations (JTR) pertinent to claimant's request for reconsideration reads as follows:

> A. General. On a day that all meals and lodging are provided without cost to a traveler [in connection with] a TDY or a training assignment, the per diem is:
>
> . . . .
>
> 2. OCONUS[1]:
>
> a. $3.50 IE, if the employee is TDY to a U.S. Installation and lodges in GOV'T QTRS on that U.S. Installation, ...

JTR 4220-A. As we noted in our earlier decision, the parties are in disagreement as to whether claimant's lodging while stationed at Camp KAIA would qualify as lodging in Government quarters on a "U.S. Installation" within the meaning of the JTR. Claimant had asserted that, because he purportedly was not lodged on a "U.S. Installation," but rather on a North Atlantic Treaty Organization (NATO) installation, the Kabul locality rate of $6.00 per day IE rate should have been paid him for the days in question, rather than the $3.50 per day that was paid. We held that claimant failed to sustain his burden of proof in this regard.

Because claimant's request for reconsideration appeared to put forth some additional detail regarding the situs for his lodging while at Camp KAIA, we asked the agency to address more fully the issue of whether that lodging was or was not within a "U.S. Installation" within the contemplation of the JTR. The JTR, appendix A, defines the term "U.S. Installation" as:

> A base, post, yard, camp or station:
>
> 1. Under the local command of a [U.S.] uniformed service,
>
> 2. With permanent or semi-permanent-type troop shelters and a Gov't Dining Facility/Mess, and
>
> 3. At which there are U.S. Gov't operations.

The parties agree that Camp KAIA is a NATO installation and apparently, there is no dispute as to the building where claimant was lodged, Building 503, constituting a permanent shelter. They disagree, however, on whether claimant was lodged on a "U.S. Installation"

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[1] OCONUS is an acronym for Outside the Continental United States.

within that NATO installation. In this regard, claimant makes several assertions: (1) that the building where he was billeted was not set off from the rest of Camp KAIA by fences or boundaries, was owned and maintained by NATO, and thus was not a U.S. Government "base, post, yard, camp or station"; (2) that all of Camp KAIA, including the building in question, was under NATO command and, more particularly, the command of a Turkish general officer; (3) that there was no U.S. Government dining facility or mess; and (4) that the operations being conducted were NATO operations and not U.S. Government operations.

In response to these contentions, the agency presented, among several other items, an additional sworn declaration of claimant's branch chief, an individual who accompanied claimant on TDY and who states that he led the agency team in Kabul. According to that declaration, in terms of whether U.S. Government operations were being conducted by claimant's team while at Camp KAIA, although the team was "involved supporting" a "NATO-led organization," the International Security Assistance Force (ISAF), the team mission "was sourced with [U.S.] Department of Defense appropriated funding" and "[e]ach member of the team, including [claimant] were DoD employees performing a DoD mission being directed by OSD [the Office of the Secretary of Defense]." As to whether Building 503 – the "U.S.-operated military dormitory" where the branch chief states he lived directly across the hall from claimant for the duration of their deployment to Kabul – was under NATO control, the declaration does not indicate that the building itself was set off from the remainder of the Camp KAIA facilities by fencing (but does speak of the presence on Camp KAIA of a "small area secured by a fence that housed a Special Operations Center and a secure conference room" for a unit of the U.S. Air Force), and acknowledges that the team "lived in a mixed housing area, meaning that our U.S.-operated military quarters were located next to buildings housing foreign nationals." Nevertheless, the declaration goes on to state: "The building we lived in housed only US military service members and DoD civilian employees. I am certain that the building we were housed in was managed by the United States military and at all times was used exclusively for the sole purpose of housing U.S. civilian and U.S. military personnel. . . . The United States Office of the Secretary of Defense and the Defense Logistics Agency (DLA) maintained criminal jurisdiction over me and my entire team throughout our deployment to Kabul." Moreover, nothing within the JTR indicates that a "U.S. Installation" may not be incorporated within the boundaries of a NATO facility and nothing indicates that, to constitute a "base, post, camp, yard, or station," fencing is a prerequisite. Nor does the JTR limit a government "base, post, camp, yard, or station" to properties technically owned and maintained by the U.S. Government.

In terms of there being a U.S. Government dining facility (DFAC) available for claimant's use, the branch chief's declaration states unequivocally: "The US managed DFAC was very close to our [team] workspace and my team and I used this DFAC for breakfast, lunch and dinner through the majority of our stay on Camp KAIA. We regularly ate as a

team, and I can attest that [claimant] ate . . . many of his meals at this US dining facility. . . . In the event that any member of the DLA team, including [claimant], chose to eat at a non-DoD dining facility, the procedures for signing in were identical to those for eating in a [U.S.] DFAC: DLA team members had their DFAC cards scanned and entered the facility. Team members ate at no cost regardless of where they chose to dine."

As we stated in our earlier decision, a claimant bears the burden of proof when it comes to establishing entitlement to additional reimbursement. *Slip op.* at 5 (citing *Renee Cobb*, CBCA 5020-TRAV, 16-1 BCA ¶ 36,240, at 176,819). Claimant has provided the Board with insufficient support to overcome the evidence furnished by the agency and cannot be said to have sustained his burden of proof as to the portion of his claim relating to additional IE reimbursement while at Camp KAIA. To the contrary, we find that the enclave within which claimant was lodged qualified as a "U.S. Installation" within the meaning of the JTR and that claimant was properly compensated for IE for his stay at Camp KAIA.

Decision

For the foregoing reasons, the request for reconsideration is denied.

RICHARD C. WALTERS
Board Judge