UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 28, 2017

CBCA 5418-TRAV

In the Matter of J. JACOB LEVENSON

J. Jacob Levenson, Plymouth, MA, Claimant.

Teresa L. Weaver, Chief, Finance Office, Bureau of Safety and Environmental Enforcement, Department of the Interior, Sterling, VA, appearing for Department of the Interior.

LESTER, Board Judge.

Claimant, J. Jacob Levenson, asks us to revisit our decision of April 14, 2017, in which we denied all but a small portion of the travel claim at issue here, to correct what he tells us are factual errors. Although Rule 407 of the Board's Rules permits a claimant to seek reconsideration of a Board decision, that rule provides that "[m]ere disagreement with a decision or re-argument of points already made is not a sufficient ground for seeking reconsideration." 48 CFR 6104.407 (2016). Based upon the record before us, we must deny the reconsideration request.

Background

As explained in our April 14 decision, Mr. Levenson, who works for the Bureau of Ocean Energy Management (BOEM) within the Department of the Interior (DOI), alleged that his supervisor had authorized him to depart on temporary duty (TDY) travel from his second home near Boston, rather than from his permanent duty station (PDS) in Herndon, Virginia, and then to return to the Boston area. Based upon that approval, he argued, he was entitled to reimbursement from DOI for extra costs that he incurred in traveling from Massachusetts to his TDY destination (beyond those costs that he would have incurred had

he departed from and returned to his PDS). We found no evidence in the record before us showing that the supervisor had authorized a Massachusetts departure before the TDY trip began; that, regardless of whether the supervisor knew of the Massachusetts departure before travel began or learned of it later, she never intended to authorize reimbursement for costs above and beyond those that Mr. Levenson would have incurred had he traveled from his PDS; and that, in any event, the supervisor has never made a determination that a departure from and return to Massachusetts was "officially necessary," meaning that the Government was not responsible for travel costs beyond those that would have been necessary for roundtrip travel originating from the PDS. *J. Jacob Levenson*, CBCA 5418-TRAV, slip op. at 9-10 & n.6 (Apr. 14, 2017).

Discussion

Mr. Levenson argues that our factual assumptions are wrong. He asserts that, before he began his TDY travel, his supervisor was aware of his intent to depart from Boston rather than his PDS, asserting that "[t]he travel authorization [he] provided and [his] supervisor approved had Boston as the departure location in the itinerary she approved." As discussed in our April 14 decision, Mr. Levenson presumably is relying upon the rule that, "once an agency has authorized travel or relocation allowances which it had the discretion to grant, and the employee incurs expenses in reliance on the authorization, the agency must reimburse the employee for those expenses." *Levenson*, slip op. at 9 n.6 (quoting *Carolyn Gonzalez*, CBCA 5091-RELO, 16-1 BCA ¶ 36,307, at 177,038-39).

In making findings about the facts in this matter, we can only rely upon the evidence that is submitted to us. That evidence shows that Mr. Levenson's supervisor approved a travel authorization on February 5, 2017 – before Mr. Levenson departed on travel – through the electronic Concur travel management system (Concur). Neither the Concur authorization nor the information that went to Mr. Levenson's approving official as part of the authorization request says anything about Mr. Levenson departing from and returning to a location other than his PDS. The authorization request listed the "Trip Name" as "Wilmington, NC and Jacksonville, FL Scoping Meetings," without mentioning the departure location. It identified Mr. Levenson's PDS as Herndon, Virginia, and his "Home Address" as being in Severna Park, Maryland. In the "Other Authorizations," "Comments," and "Destination Detail" portions of the Concur authorization, there was no mention of, much less an approved authorization for, a departure from Boston rather than the PDS.

To the extent that Mr. Levenson is saying that the itinerary he developed on the Concur system in preparing his authorization request involved a Boston departure, it is of no

assistance to him. That itinerary did not go to the supervisor with the authorization request. There is nothing in this record establishing otherwise.[1]

After receiving and reviewing Mr. Levenson's claim, we specifically told Mr. Levenson – on more than one occasion – that he needed to provide us with evidence (through contemporaneous email messages, declarations from relevant officials, or other documentary material) to support his assertion that his supervisor knew of and approved his Boston departure location through his pre-travel authorization, as well as to show that the authorizing official had made a determination that it was "officially necessary" for Mr. Levenson to depart from and return to Boston. The only submission in response was a February 28, 2017, statement from Mr. Levenson's supervisor in which she represented that, "in March 2013," she had approved Mr. Levenson's travel itinerary, which she knew at the time included departure from Massachusetts rather than his PDS. As the agency correctly noted in response, Mr. Levenson did not begin work for the BOEM until February 2014, eleven months after the identified March 2013 date. Plainly, the date included in the supervisor's statement was in error. Yet, there was never any correction submitted. For purposes of our decision, and because it was consistent with other documents in the record, we assumed that, when the supervisor indicated "March 2013," she meant "March 2015," a date after Mr. Levenson had completed his trip. *Levenson*, slip op. at 4 n.3.

Mr. Levenson now suggests that not only was the year wrong in the supervisor's statement, but also the month was wrong, and the supervisor really meant "February 2015" (such that authorization to leave from Boston was granted before he began TDY travel). We have nothing from the supervisor attesting to that date. As previously mentioned, in deciding travel claims, we can only rely on the evidence that is presented to us. Evidence is "[s]omething (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact." *Black's Law Dictionary* 673 (10th ed. 2014). Here, there is no evidence before us showing that, before he departed on his TDY travel, his supervisor had knowingly approved a request authorizing him to depart from Boston at

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[1] As an attachment to his claim, Mr. Levenson provided us with a *post*-travel reimbursement authorization form showing that, *after* he completed travel, he included travel itineraries in his reimbursement request showing Boston as his departure and return location. The agency has provided us with the *pre*-travel authorization, which makes no mention of Boston. Though the amount of the airfare identified in the pre-travel authorization apparently was the then-anticipated price of the Boston trip, nothing in this record indicates that the supervisor should have known that or indicates that she intentionally approved a request that the Government pay increased costs to allow Mr. Levenson to travel from Boston rather than his PDS.

DOI's expense. "Since the claimant is demanding payment from the Government, the burden is on the claimant to show us why he should prevail." *Paul B. Garvey*, GSBCA 13658-RELO, 97-1 BCA ¶ 28,690, at 143,298 (1996). Unless the agency stipulates to or elects not to contest certain factual assertions, that burden includes the obligation to come forward with *some* type of supporting evidence. *Id.* The claimant's say-so, supported only by a supervisor's letter identifying a different date than the one he says is correct, does not satisfy that burden.

In any event, as we explained in our April 14 decision, any dispute about whether the supervisor knew about the Massachusetts departure before the TDY travel began is unnecessary to the result here. There is a difference between (1) an authorizing official's knowledge that an employee intends to begin TDY travel from an alternate location and (2) the official's authorization obligating the Government to pay increased costs for travel from that alternate location. If the Government authorizes TDY travel, the traveler is required, for reimbursement purposes, to travel "by the usually traveled route unless [his or her] agency authorizes or approves a different route as officially necessary." 41 CFR 301-10.7. That requirement includes a need for the employee to depart for TDY travel from his or her PDS unless authorized because of official necessity to depart from elsewhere. *See Levenson*, slip op. at 5-9. That does *not* mean that the employee cannot, for personal convenience, alter that travel route. It only means that, if the employee alters the route, he or she, not the Government, is financially responsible for any additional costs that result from the change. *See* 41 CFR 301-10.8 (if an employee travels by a different-than-authorized route for personal convenience, "reimbursement will be limited to the cost of travel by a direct route or on an uninterrupted basis").

In a statement that Mr. Levenson's supervisor provided to the Board on March 7, 2017, the supervisor made clear that, to the extent that she approved Mr. Levenson to depart on TDY travel from Massachusetts, she did so consistent with the conditions that DOI's Bureau of Safety and Environmental Enforcement (BSEE) provided to her and to Mr. Levenson in 2014, almost a year before the TDY trip at issue here. In 2014, BSEE had, both verbally and in writing, explained to Mr. Levenson the FTR requirements about traveling from an alternate location and stated that reimbursement would be limited to the amount that would have been incurred had he departed from his official duty station. As we found in our April 14 decision, to the extent that Mr. Levenson's supervisor knew of Mr. Levenson's departure location plans, she did not authorize him to be reimbursed for additional costs that the departure from Boston generated. She never made any determination that travel from and to Boston was "officially necessary" to the Government's interests. In such circumstances, regardless of when Mr. Levenson's supervisor learned of his travel departure plans, it was Mr. Levenson's choice, made for personal convenience, to begin and end his travel in Massachusetts. He is not entitled to force DOI to pay for costs, including increased airfare,

above and beyond those that he would have incurred for TDY travel had he departed from and returned to his PDS.

Decision

Mr. Levenson's request for reconsideration is denied.

HAROLD D. LESTER, JR.
Board Judge