



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 22, 2008

CBCA 1106-RELO

In the Matter of JAMES M. CUNNINGHAM

James M. Cunningham, Mumbai, India, Claimant.

Nancy J. Kripner, Office of Foreign Service Human Resources, United States and Foreign Commercial Service, International Trade Administration, Washington, DC, appearing for Department of Commerce.

SHERIDAN, Board Judge.

Claimant, James M. Cunningham, is a foreign commercial service officer with the United States and Foreign Commercial Service (US&FCS), International Trade Administration, Department of Commerce. Mr. Cunningham seeks review of the agency's decision denying reimbursement of \$3826 he paid to change an airline ticket in conjunction with his transfer of official duty (TDY) station and \$1265 he allegedly incurred in lodging costs while on temporary duty prior to his move to the new station. We affirm the agency's decision and deny claimant's request for reimbursement.

Background

US&FCS issued orders for Mr. Cunningham to make a permanent change of station from Rio de Janeiro, Brazil, to Mumbai, India, in 2005. The orders provided that while en route between stations, Mr. Cunningham would perform forty-seven days of TDY, from July 4 through August 20, 2005, in Washington, D.C., for training and consultations. He would then take annual leave before reporting to Mumbai. The orders provided that while in Washington, claimant would be reimbursed for his lodging costs up to a maximum of \$153 per day during his first thirty days and \$76.50 per day during subsequent days of TDY.

While on TDY in Washington, Mr. Cunningham stayed at an apartment complex, where his rent was \$118.40 per day from July 4 through August 2, and \$117.40 per day thereafter. US&FCS reimbursed claimant at the maximum authorized rates -- \$153 per day for each of the thirty days from July 4 through August 2 and \$76.50 per day for each of the seventeen days from August 3 through August 20.

On August 10, Mr. Cunningham requested the agency to authorize business class travel from Washington to Mumbai because of his medical condition. The agency asked him to provide supporting documentation regarding the condition and resultant need for business class seating. On September 7, claimant finally submitted documentation which the agency reasonably considered sufficient to support his request. He made a business class reservation for an United Airlines (United) flight leaving that evening from Dulles International Airport (Dulles), near Washington, and connecting through Zurich to Mumbai on a Swiss International Air Lines (Swissair) flight for a fare of approximately \$3600.

With Mr. Cunningham's departure imminent, the agency travel specialist who was assisting with travel arrangements asked the Scheduled Airline Ticket Office (SATO) whether it could issue electronic tickets so claimant could avoid a trip to Commerce Department headquarters in downtown Washington to pick up paper tickets. SATO informed her that the only itinerary that was available with electronic ticketing was a United itinerary that added a connection in Frankfurt, Germany, between Zurich and Mumbai. At the request of the agency travel specialist, SATO changed the reservation to the United itinerary that included the connection in Frankfurt. The fare for the revised ticket was \$3694.30.

When Mr. Cunningham arrived at the airport to begin his journey, he learned about the additional Frankfurt stopover. He was displeased because the new routing would cause him to arrive approximately three hours later in Mumbai, where he would miss his planned ground transportation. Claimant did not contact his agency for assistance in resolving the problem. Instead, claimant spoke to a SATO agent who explained the change in ticketing. Finding the Frankfurt stopover unacceptable to him, claimant pressed the SATO agent to change the ticket back to the Dulles/Zurich/Mumbai itinerary. The SATO agent informed claimant he could not do that because it would involve electronic ticketing which was not available for the Zurich/Mumbai part of the itinerary. At Mr. Cunningham's insistence, the SATO agent reinstated the Swissair Zurich/Mumbai reservation.

Mr. Cunningham then flew from Dulles to Zurich using the United tickets with the Dulles/Zurich/Frankfurt/Mumbai itinerary. When in Zurich, he went to purchase the ticket for the direct Swissair Zurich/Mumbai flight. There he found out that "the cost of the second leg of the journey alone would be far more than originally quoted . . . [but] at that stage I had no alternative but to purchase the ticket." The direct Swissair flight was scheduled to leave

at 10:00 a.m. on September 8. The United flight, with the stopover in Frankfurt, was scheduled to depart Zurich one hour later, at 11:02 a.m. Claimant decided to purchase the direct Swissair Zurich/Mumbai ticket, and placed the additional \$3826 charge on his credit card. Claimant then abandoned the ticketed United Dulles/Zurich/Frankfurt/Mumbai itinerary mid-trip and flew directly from Zurich to Mumbai on the Swissair flight.

The agency sought, but the airline would not provide, a refund for the unused portion of the United Dulles/Zurich/Frankfurt/Mumbai ticket. On November 2, 2005, the National Business Center (NBC), Department of the Interior, denied Mr. Cunningham's reimbursement for the \$3826 Swissair Zurich/Mumbai ticket he purchased with his credit card.¹ NBC explained: "The ticket you purchased, for direct travel from Zurich to Mumbai, is only reimbursable up to the amount refunded the government for the unused ticket." As a refund for the unused ticket was not able to be recovered, no payment of the ticket claimant purchased on his own credit card was reimbursed to him.

Regarding his per diem, Mr. Cunningham was reimbursed at the authorized daily rates. For the first thirty days, from July 4 through August 2, 2005, he received \$153 per day for lodging. Thereafter, the rate dropped to \$76.50 per day, and claimant was reimbursed from August 3 through 20, 2005, at that rate. NBC applied the reduced rates in processing claimant's voucher.

Discussion

As a foreign commercial service officer, claimant's travel is governed by the Foreign Affairs Manual (FAM). The FAM provides that:

In accordance with the provisions of law and these regulations, Foreign Service employees and the members of their families are entitled only to actual and necessary expenses incurred in the performance of official travel. Travelers are expected to make a conscientious effort to minimize costs of official travel and to assume costs of a personal nature and any additional expenses incurred for personal convenience.

14 FAM 513.

"Employees are expected to use good judgment in the costs they incur for all official transportation expenses as if they were personally liable for payments." 14 FAM 515(a).

¹ NBC processes travel voucher payments for the US&FCS.

Travelers are also responsible for “any charges incurred through failure to comply with the governing regulations, regardless of who may have assisted the traveler in making travel arrangements.” 14 FAM 515(c)(2).

With regard to the additional charge for the Swissair Zurich/Mumbai ticket, claimant argues that, because US&FCS delayed in responding to his request for business class travel, neglected to inform him it cancelled and re-routed his planned itinerary, and failed to cancel the portion of the United tickets he did not use, the agency should be held responsible for the \$3826 charge. We disagree.

Based on the record, we believe that claimant’s own questionable and tardy presentation in support of his asserted medical need for business class seating was the cause of the delay in issuance of his original tickets. Once the agency had such documentation, it acted promptly to approve claimant’s request and to secure for him tickets which he could obtain within the short time available before departure and without driving into downtown Washington. What caused the additional costs are claimant’s failure to contact the agency when he discovered the change in the tickets, his demand that the previously cancelled reservation be reinstated, and, ultimately, his imprudent purchase of the reinstated Swissair ticket mid-way through the trip.

“It is a fundamental, overarching principle that a federal civilian employee traveling on official business ‘must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business.’” *Jack L. Hovick*, CBCA 655-TRAV, 07-2 BCA ¶ 33,616 (quoting 41 CFR 301-2.3 (2006)); *see also Radhika Patole*, CBCA 770-TRAV, 07-2 BCA ¶ 33,648. Claimant violated this rule when he elected to spend an additional \$3826 to avoid the stopover in Frankfurt. For us to find that using the second ticket was a prudent expense, a claimant must demonstrate that using the second ticket resulted in some economic or logistical benefit to the agency. *See, e.g., Peter C. Thurman*, GSBCA 15562-TRAV, 01-2 BCA ¶ 31,516.

Claimant’s assertion that he would have missed a ground transportation connection in Mumbai does not justify his lack of prudence. Further, claimant has not demonstrated an economic or logistical benefit to the agency or that there was some mission-related requirement that justified the additional expense. Given the circumstances presented here, claimant’s desire to avoid the stopover in Frankfurt, and changed ground transportation plans, is clearly insufficient justification. The unauthorized additional expense of \$3826 for the Swissair Zurich/Mumbai ticket is claimant’s own responsibility.

Regarding the \$1265 claimant avers he should be compensated for additional lodging expenses, claimant has not provided any statutory or regulatory authority, or compelling

argument, for increased rates or additional expenses. He has received all the lodging compensation he was authorized. We deny his claim for payment of an additional \$1265 for lodging.

Decision

The agency determination is affirmed and the claim denied.

PATRICIA J. SHERIDAN
Board Judge

