



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 22, 2008

CBCA 1108-RELO

In the Matter of MARTIN WISEMAN

Martin Wiseman, Richmond, CA, Claimant.

Kenneth Hanson, Office of Technical Assistance, Department of the Treasury, Washington, DC, appearing for Department of the Treasury.

STEEL, Board Judge.

Assigned to the Treasury Department's Office of Technical Assistance (OTA), Martin Wiseman served as a banking advisor to the Central Bank of Iraq from October 2006 to September 2007. This assignment involved a permanent change of station (PCS). His claims for increased expenses incurred on his PCS travel return flight to the United States (\$435.65 for overnight expenses and per diem in Kuwait City while in transit, and \$119 for an upgrade to economy plus (business class) for a flight in excess of fourteen hours) were denied by OTA, and Mr. Wiseman appeals to this Board.

Mr. Wiseman's original authorization for PCS travel from Iraq to the United States was routed through Amman, Jordan, the most commonly used routing. He was scheduled to leave Baghdad on September 27, 2007, traveling through Amman and Frankfurt, Germany, and arriving in the United States at 2:06 p.m. on September 28. Mr. Wiseman requested of OTA that his return flight instead be routed through Kuwait City, Kuwait, even though it would cost \$206.40 more, apparently because the new itinerary would save him about seven hours in travel time and save the expense of an overnight stay in Amman. OTA granted his request, after receiving Mr. Wiseman's assurance by e-mail that the new itinerary did not include a layover in Kuwait.

Three days before he intended to travel, Mr. Wiseman made reservations through AirTransIraq for the authorized travel on a military transport flight from Baghdad to Kuwait. At that time, he learned that because of heightened security, any flight out of Iraq (whether to Kuwait City or to Amman) must occur at least one day prior to the scheduled departure date of the subsequent flight to the United States or Germany. This necessitated that he stay overnight in Kuwait before his nonstop flight to the United States. He rescheduled his flight to Kuwait and stayed overnight in Kuwait City before catching the authorized flight to the United States. Mr. Wiseman is now claiming the cost of this Kuwait City overnight stay.

OTA was also unaware of the requirement that persons being transported out of Iraq with a destination of the United States or Germany schedule their flights a day before the next leg of their trip. According to OTA, the reason the agency initially agreed to authorize the more expensive flight itinerary was because Mr. Wiseman would be eliminating the overnight layover in Amman, Jordan.

Mr. Wiseman did not inform OTA of the AirTransIraq requirement before traveling and incurring the unauthorized cost of the overnight stay in Kuwait. It is OTA's position that "Mr. Wiseman should have contacted the program office when he learned that the routing through Kuwait City would also require an overnight stay. The original itinerary through Amman would have been reinstated at a cost savings to the Government. Mr. Wiseman acted on his own and without approval, selecting options that ultimately resulted in costs that could have been avoided." Mr. Wiseman counters that, because of the schedules to Amman, when taking into account the new extra day scheduling requirement, he would have had to stay at the Government's expense in Amman for five nights with per diem, instead of the one night's stay and per diem he actually incurred by traveling through Kuwait City instead. But Mr. Wiseman did not contact OTA before his flight, and instead took it upon himself to deviate from the travel authorization.

It may be the case that if Mr. Wiseman had contacted OTA and informed them of the requirement to leave Baghdad a day early regardless of whether he was flying through Amman or Kuwait City, OTA would have reinstated his original itinerary through Amman; it is also a possibility that the agency would have authorized his overnight stay in Kuwait if that course of action would have resulted in greater benefit to the Government. Perhaps OTA also could have rescheduled the flight from Amman to Washington earlier or later so as to avoid the five-day wait Mr. Wiseman projects.

When an employee travels by a route other than the one selected by his agency, he is responsible for the costs which would not have been incurred if he had followed the agency's

direction. To determine the extent of those additional costs, the agency must calculate the constructive costs of travel by the prescribed route and compare them to the costs of travel by the route actually traversed. *Daniel G. Shelton*, CBCA 473-TRAV, 07-1 BCA ¶ 33,493; *Phillip V. Otto*, GSBCA 16192-TRAV, 04-1 BCA ¶ 32,429 (2003); *Russell E. Yates*, GSBCA 15109-TRAV, 00-1 BCA ¶ 30,785.

We will never know which route OTA would have selected if Mr. Wiseman had conveyed to his agency an important fact that he learned three days before he traveled -- that no matter whether he flew from Baghdad to Washington through Amman or Kuwait City, he would have to spend at least one night in the stopover city before continuing his journey. The employee should have given the agency the opportunity to re-evaluate its choice with this information in mind. For the purpose of resolving this claim, we consider it appropriate for the agency to determine now what route it would have selected if it had know the information.

OTA acted inappropriately by simply denying Mr. Wiseman's claim for the costs of his overnight stay in Kuwait City. The agency should instead calculate the amount it would have spent if Mr. Wiseman had traveled through Amman (including meals and lodging for as many nights as he would have had to stay there), compare that amount to the costs the employee actually incurred in traveling through Kuwait City, and reimburse Mr. Wiseman for the lesser of the two. If the employee's actual costs were greater than the constructive costs of travel through Amman, he must absorb the difference.

Mr. Wiseman is also requesting reimbursement of \$119 for an upgrade to economy plus (business class) for his non-stop flight from Kuwait City to Washington, D.C., since his flight departed from a city outside the continental United States (OCONUS) and the total travel time including layovers exceeded fourteen hours. He cites in support anecdotal evidence of another OTA staff member who was permitted to travel business class from the United States to Cairo, Egypt, and return.

Generally, Government employees are limited to coach-class accommodations when traveling at Government expense. 41 CFR 301-10.122 (2007).¹ An exception may be made under certain circumstances, such as where the origin and/or destination are OCONUS and the scheduled flight time, including stopovers and change of planes, is in excess of fourteen hours. 41 CFR 301-10.124. In order for the Government to pay, however, any use of

¹ The note to 41 CFR 301-10.124 states: "You may upgrade to business-class at your personal expense, including through redemption of frequent flyer benefits."

business-class service also must be specifically authorized or approved in advance. 41 CFR 301-2.5(a). OTA correctly refused to authorize payment for this upgrade because the upgrade was not authorized or approved in advance.

CANDIDA S. STEEL
Board Judge