



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 24, 2010

CBCA 1838-TRAV

In the Matter of JACK J. PAGANO

Jack J. Pagano, Davenport, FL, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

SHERIDAN, Board Judge.

Claimant, Jack J. Pagano, a civilian employee of the Afghanistan Engineer District (AED), United States Army Corps of Engineers (USACE), contests the agency's attempts to recover \$2072.63 it reimbursed claimant in connection with temporary duty (TDY) travel. Travel orders authorizing claimant thirteen days of TDY travel were issued and the travel was completed according to the orders. Claimant was paid for the travel. A later-conducted internal investigation subsequently determined that the travel was personal in nature and should have been conducted as rest and recuperation (R&R) travel. The agency seeks to recoup \$2072.63 paid to claimant.

As a general rule, after an employee travels, an agency cannot retroactively amend an employee's travel orders to increase or decrease an employee's benefits unless the orders were clearly erroneous, were in conflict with a law or regulation, or were contrary to the agency's definite intention when the orders were issued. For the reasons set forth below, we find the USACE's decision to recoup the \$2072.63 to be unsupported by the facts and law.

Background

Claimant was a public affairs specialist employed by the AED and stationed in Afghanistan. On March 23, 2009, TDY order number 901945N0 was created at claimant's request for thirteen days of TDY commencing on April 17, 2009, originating from Kabul, Afghanistan; traveling to Las Vegas, Nevada, then on to Orlando, Florida, and Indianapolis,

Indiana; and returning to Afghanistan on April 30, 2009. The stated purpose of the travel was: 1) to attend the National Association of Broadcasters (NAB) annual convention in Las Vegas, Nevada; 2) to conduct interviews and shoot a video of members of the 641st Engineers working on Mine Resistant Ambush Protected (MRAP) vehicles in Orlando, Florida; and 3) to work with Personnel Force Innovation (PFI) program personnel at the Defense Finance and Accounting Service in Indianapolis, Indiana, to provide one hour of video footage for editing into a PFI overview.¹ After reviewing the purpose of the travel, claimant's supervisor and AED command approved the TDY travel.

Claimant flew to Las Vegas on April 19, 2009, where until April 23, he participated and spoke as part of a panel at the NAB convention. At the convention claimant also obtained assistance from other attendees in the procedures for digitizing footage into many formats that helped him recover certain files. Claimant departed Las Vegas on April 23, 2009, to Orlando, and remained there from April 23 through 27 to video record and conduct interviews of members of the 641st Engineers working on MRAP vehicles in preparation for deployment. Reimbursement for lodging expenses was not requested, because Orlando was claimant's home of record. Claimant departed Florida on April 27, to Indianapolis, where he learned that he was not needed to edit the MRAP video footage shot in Orlando. After turning over his video footage in Indianapolis on April 28, claimant departed and returned to Afghanistan.

Sometime after claimant's TDY travel was processed and paid, an internal investigation was undertaken by the USACE's Transatlantic Programs Center (TAC), which, as of October 1, 2009, was renamed the Corps of Engineers Middle East District (CETAM). As a result of its investigation, TAC/CETAM determined that the TDY travel performed by claimant was personal in nature and should have been conducted as R&R, or a combination of R&R and TDY. The TAC/CETAM investigator wrote:

Investigation concluded that the TDY was in fact personal travel conducted by [claimant] to his home of record at government expenses. Implications that the TDY was in fact conducted under a pretense of [claimant] attending the NAB convention in Las Vegas as a private citizen and then justified by shooting video footage of army reservists in Orlando . . . the home of record of [claimant], concludes that it was not in the best interest of AED and that the

¹ PFI is a program that matches up organizations that need military workers with National Guard and other reserve members looking for active duty tours.

same results could have been achieved at less cost to the government using public affairs in the United States.

On behalf of TAC/CETAM, the USACE Finance Center sought reimbursement from claimant of \$2072.63, which represents all costs associated with claimant's travel except airfare.

Discussion

A travel order establishes the conditions, in writing, under which official travel and transportation are authorized at government expense, and provides a notice and record of the employee's instructions and entitlements. *Andre E. Long*, GSBCA 14498-TRAV, 98-1 BCA ¶ 29,731. Consequently, legal rights and liabilities in regard to travel allowances vest as and when travel is performed under a competent order. *Id.* at 147,387. Claimant's travel from April 17 through April 30, 2009, was approved and payment processed as temporary duty travel (TDY).

As a general rule, after an employee travels, travel orders cannot be retroactively revoked or modified to decrease or to increase an employee's benefits unless the order was erroneous on its face, was in conflict with a law, regulation, or agency instruction, or was contrary to the agency's definite intention when the orders were issued. *Mark N. Roush*, CBCA 1706-TRAV, 10-1 BCA ¶ 34,313, at 169,494 (2009) (citing *William T. Cowan, Jr.*, GSBCA 16525-TRAV, 05-1 BCA ¶ 32,906, and *Long*). Moreover, when all or part of the particular order involves an exercise of discretionary factors by the authorizing official, the order will be presumed correct in the absence of clear evidence of misapplication of those factors. *Peter R. Maloney*, B-229466 (Dec. 5, 1988).

In urging the agency to decrease claimant's TDY payment by \$2072.63, the TAC/CETAM investigator represented, among other things, that claimant performed some work at or near his home of record and "the same results could have been achieved at less cost to the government using public affairs channels in the United States." The investigator determined that the travel should have been categorized as personal and R&R as opposed to TDY. We disagree.

Claimant's travel was described to his command, approved, completed, and paid. There is no indication from the record that claimant in any way misrepresented the purposes of his travel, that erroneous assumptions were made in approving the TDY travel, or that any adverse actions were taken as a result of illegal or erroneous travel orders. The travel orders do not conflict with laws, regulations, or agency instructions, and do not appear to be

contrary to the agency's intentions when the orders were issued. The fact that claimant went to a convention, or that part of the travel brought claimant to or near his home of record, is not prohibited by laws, regulations, or agency instructions.

In urging retroactive modification of the TDY payment the agency relies on an after-the-fact investigation in which the investigator draws negative conclusions from facts provided by claimant. Regarding the TDY travel, claimant clarified for the investigator that he was invited to participate at a convention break-out panel session on video techniques and mobile war-fighting, that while in Orlando he shot interviews of Army reservists working with MRAP vehicles and digitized the material to hard drive for the PFI program in Indianapolis and AED back in Afghanistan. The video was for a PFI recruiting overview. While in Indianapolis, claimant transferred the video material he acquired in Orlando to the PFI Indianapolis' hard drive and provided PFI Indianapolis with some additional Afghanistan footage.

There is no indication in the record that claimant's then-supervisors were later approached to determine why they believed the travel was advantageous for government business and approved the travel as TDY. There is no evidence that any adverse personnel action has been taken regarding this supposedly improper travel authorization. We do not accept the investigator's unsupported conclusions that the same results could have been achieved at less cost or that the travel in issue was personal in nature. It appears to us that there were rational bases and legitimate business purposes for this TDY travel. The agency has failed to provide sufficient evidence to support a modification decreasing claimant's TDY payment by \$2072.63.

Decision

Based on the foregoing, claimant is entitled to retain the \$2072.63 the agency sought to recover in this claim.

PATRICIA J. SHERIDAN
Board Judge