UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 4, 2016

CBCA 5117-TRAV

In the Matter of MICHELLE R. VILLERS

Michelle R. Villers, Norton, OH, Claimant.

Maj. Carlos M. Colon, Jr., Chief, Air Force Casualty Services Branch, Headquarters Air Force Personnel Center, Department of the Air Force, Joint Base San Antonio-Randolph, TX, appearing for Department of the Air Force.

HYATT, Board Judge.

The Air Force Casualty Services Branch filed this claim on behalf of Michelle R. Villers. Ms. Villers was issued invitational travel orders, under the emergency family member travel program, to visit her daughter, a member of the Air Force, who was gravely ill. This program, which is implemented by the Air Force pursuant to the authority of 37 U.S.C. § 411h (2006)[1], provides for the reimbursement of travel expenses incurred by family members who visit seriously ill or injured military members. In May 2007, Ms. Villers flew to Lackland Air Force Base to be with her daughter, who eventually passed away in August 2007.

Ms. Villers incurred reimbursable travel costs consisting of $1159.78 for airline tickets and $4739.25 in per diem (meal and incidental expenses). She was able to stay on base and did not incur lodging expenses. The Air Force provided her with an advance in the amount of $2186. In May 2013, Ms. Villers contacted the Air Force to seek payment of the

[1] This provision is currently codified at 37 U.S.C. § 481h (2012).

remaining amount of $3713.03, submitting documentation relevant to the claim.[2] After working with the Air Force, she submitted a formal voucher for that amount to the Defense Finance and Accounting Service (DFAS) on February 5, 2014. DFAS determined that the voucher should not be paid because it was submitted more than six years after the claim accrued.

Discussion

The Air Force points out that Ms. Villers initiated the process to obtain reimbursement for the subject expenses with the agency prior to the expiration of the six-year period and expresses regret that the agency was not more proactive in assisting her to pursue her claim. In addition, the Air Force acknowledges that it failed to advise Ms. Villers to the need to submit her completed voucher prior to the expiration of the six-year period provided by statute. In essence, the Air Force has asked the Board to review the disallowance of the claim by DFAS and to determine if the circumstances provide a basis to find either that the six-year limitation was in fact met, or that the time limitation should be extended under the doctrine of equitable tolling. *See Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990).

The authority to authorize reimbursement of the expenses incurred by Ms. Villers derives from Title 37 of the United States Code, which governs pay and allowances of the uniformed services. Section 411h of this title, authorizing travel and transportation allowances for family members of seriously injured or ill members of the uniformed forces, provides in pertinent part:

> (a)(1) Under uniform regulations prescribed by the Secretaries concerned, transportation described in subsection (c) may be provided for not more than three family members of a member described in paragraph (2) if the attending physician or surgeon and the commander or head of the military medical facility exercising control over the member determine that the presence of the family member may contribute to the member's health and welfare. . . .
>
> (2) A member referred to in paragraph (1) is a member of the uniformed services who —

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[2] Correspondence included in the materials provided by the agency suggests that there may have been some confusion as to whether the claim should be handled by the Department of Veterans Affairs or the Air Force.

> (A) is serving on active duty or is entitled to pay and allowances under section 204(g) of this title (or would be so entitled were it not for offsetting earned income described in that section) . . . ; and
>
> (B) either — (i) is seriously ill, seriously injured, or in a situation of imminent death (whether or not electrical brain activity still exists or brain death is declared); and is hospitalized in a medical facility in or outside the United States . . . .

37 U.S.C. § 411h.

Statute, at 31 U.S.C. § 3702 (2012), defines how various claims against the United States are to be handled. The statute provides in pertinent part:

> (a) Except as provided in this chapter or another law, all claims of or against the United States Government shall be settled as follows:
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> (1) The Secretary of Defense shall settle—
>
> > (A) claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits; and
> >
> > (B) claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at Government expense.
>
> (2) The Director of the Office of Personnel Management shall settle claims involving Federal civilian employees' compensation and leave.
>
> (3) The Administrator of General Services shall settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station.
>
> (4) The Director of the Office of Management and Budget shall settle claims not otherwise provided for by this subsection or another provision of law.

Subsection (b)(1) of section 3702 provides that

> A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues except—
>
> (A) as provided in this chapter or another law . . . .

This Board has been delegated the authority provided to the Administrator of General Services in 31 U.S.C. § 3702(a)(3) to settle claims involving federal civilian employees. This authority includes resolving claims of certain invitational travelers who are not employed by the Federal Government. The Federal Travel Regulation (FTR) defines invitational travel, in pertinent part, as

> [a]uthorized travel of individuals . . . not employed [by the Government] . . . when they are acting in a capacity that is directly related to, or in connection with, official activities of the Government. Travel allowances authorized for such persons are the same as those normally authorized for employees in connection with temporary duty.

41 CFR 300-3.1 (2007).

With respect to claims involving the expenses of invitational travelers, our predecessor in deciding these matters noted:

> The Government Accountability Office (GAO — formerly the General Accounting Office) has interpreted [31 U.S.C. § 3702(a)] to permit an agency "to invite a private individual (or more than one) to a meeting or conference at government expense, but only if that individual is legitimately performing a direct service for the government." *DoD Section 6 School Board Members — Invitational Travel Orders*, B-260,896 (Oct. 17, 1996); *see also Chairman, United States Civil Service Commission*, 37 Comp. Gen. 349 (1957); *Secretary of Commerce*, 27 Comp. Gen. 183 (1947). Such an individual is called an "invitational traveler." 41 CFR 301-1.2(c) (2005). The GAO's understanding of the law is persuasive and of long standing, so we will follow it. Because an invitational traveler is a Federal civilian employee for the purpose of the federal travel expense laws, we may settle travel expense claims brought by such a traveler.

Kenath O. Traegde, GSBCA 16842-TRAV, 06-2 BCA ¶ 33,303, at 165,141 (footnote omitted).

This is a narrow exception, however. In a subsequent decision concerning invitational travel, the Board determined it did not have the authority to review a claim involving travel expenses of relatives of a member of the uniformed services, who were issued invitational travel orders to attend a memorial service, given that the family members were not civilian employees of the United States and there was no nexus to the civilian employee workforce. *Michael T. Hoyt*, CBCA 3299-TRAV, 14-1 BCA ¶ 35,558.

Under the reasoning of *Hoyt*, we lack authority to resolve this claim. The benefits in question accrued under statutory authority prescribing pay and allowances for members of the uniformed services. Ms. Villers is not a federal civilian employee, and, because her daughter was a member of the military, there is no nexus to the civilian employee workforce such as to bring this claim within the parameters of 31 U.S.C. § 3702(a)(3). Accordingly, we must dismiss the claim and return the matter to the Air Force.

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CATHERINE B. HYATT
Board Judge