



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 8, 2016

CBCA 5340-RELO

In the Matter of ROBERT R. SCHNEIBLE

Robert R. Schneible, Fort Worth, TX, Claimant.

Caleb J. Bowers, Office of the Chief Counsel, Headquarters, United States Army Corps of Engineers, Washington, DC, appearing for Department of the Army.

KULLBERG, Board Judge.

Claimant, Robert R. Schneible, brings this matter to the Board after his employer, the United States Army Corps of Engineers (USACE), denied his request for other than coach-class air travel for himself and his spouse. Mr. Schneible contends that such seating was necessary to accommodate his spouse's medical condition, and it was necessary for him to be seated next to her to attend to her needs during their flight from his previous permanent duty station (PDS) in Seoul, South Korea. The USACE contends that Mr. Schneible had not demonstrated the need for other than coach-class seating. For the reasons stated below, the claim is granted.

Background

By orders dated November 2, 2015, Mr. Schneible was transferred from the USACE Far East District in Seoul, South Korea, to the USACE district in Fort Worth Texas. His orders provided for transportation for himself and his spouse. Because Mr. Schneible's spouse suffered from several serious medical problems, he submitted a written request that he and his spouse be allowed to travel in other than coach-class seating.

Mr. Schneible submitted a request for other than coach-class seating on a form with numbered questions and space for his spouse's physician to write responses to those questions. The questions and the physician's responses, which were dated October 27, 2015, stated in pertinent part, the following:

2. Clinical findings that relate to the reason for travel upgrade from the most recent medical evaluation

Patient has been diagnosed with right shoulder joint tear and received . . . surgery. She also has low back pain due to disc herniation She received injection but currently has pain. Shoulder and back pain are ongoing issues and may be aggravated depend[ing] on postures.

3. Assessment of current clinical status, relevant medications prescribed, and plans for future treatment:

She is currently on pain medications for both shoulder and back pain. She needs to be observed with physical therapy and oral medications and then follow up afterwards.

4. What is the expected duration of the disability or physical impairment?

Long flight might induce the pain.

5. What is the probability that the individual may suffer injury or harm if he or she is not accommodated? Explain the medical basis for your conclusion.

It is most likely that she might have shoulder and back pain with long duration of flight. The patient is [six feet one inch] tall. She has long legs and because of her body buil[d], it is going to be difficult to have a long flight [in] econom[y] seat[ing] without pain.”

Additionally, the physician responded in the negative to each of the following questions:

- a. Can the traveler's medical condition(s) be accommodated by travel in bulkhead seating?

- b. Can the traveler's medical condition(s) be accommodated by travel in aisle seating?

- c. Is the traveler medically able to tolerate seating in coach class for any period time?
- d. Can seating in coach class with periodic movement around the cabin accommodate the traveler's medical condition(s)?
- e. Can the traveler's medical condition(s) be accommodated by periodic in-flight exercises designed to minimize the physical impacts of the flight?
- f. Can the traveler's medical condition(s) be accommodated by purchase of two adjoining coach seats?

A letter from a second physician, which was dated October 27, 2015, stated that Mr. Schneible's spouse also suffered from other severe medical problems that required Mr. Schneible to sit with her during the flight "to ensure her stability and to be able to attend to her every need."

Mr. Schneible's request for other than coach-class seating was forwarded with a recommendation for approval by the Far East District to USACE headquarters. A memorandum in support of the recommendation, which was dated November 16, 2015, noted that Mr. Schneible's spouse needed to "be able to stretch out and travel in positions and postures that will not aggravate the condition." Additionally, the memorandum acknowledged that "Coach Class accommodations cost \$679 and Premium Class accommodations cost \$9409 per person."

On December 4, 2015, the USACE's deputy commander denied Mr. Schneible's request for premium-class seating. An undated memorandum, which was attached to the notice of denial, stated the following in pertinent part:

There is no evidence nor physician required criteria that indicates the traveler's condition will be worsened by disapproval of [other than coach-class] accommodations nor does the supporting documentation provide any medical requirement that would support an attendant to travel in [other than coach-class] accommodations with the traveler

The memorandum also noted that the physician's statement did not explain why coach-class seating alternatives were not acceptable.

Mr. Schneible has represented that he did not receive notice that USACE had denied his request for other than coach-class seating until several weeks after his scheduled

departure. On December 5, 2015, Mr. Schneible and his spouse departed from South Korea on a flight to Dulles International Airport (Dulles). Mr. Schneible purchased other than coach-class tickets for himself and his spouse for \$3442.30 each. Upon arriving at Dulles, Mr. Schneible drove his personally owned vehicle (POV) to Fort Worth, Texas, with his spouse.¹

Discussion

The issue in this matter is whether USACE properly denied Mr. Schneible's request for other than coach-class seating for himself and his spouse. The Federal Travel Regulation (FTR) defines coach-class air travel as the least expensive class of air travel. 41 CFR 301-10.121(a) (2015) (FTR 301-10.121(a)). A government employee on official travel must use coach-class accommodations unless an exception under the FTR applies. *Id.* 301-10.123.

In the case of a traveler with special needs, the FTR allows "reasonable accommodations . . . by paying for additional travel expenses incurred." FTR 310-13.1. An agency will be responsible for paying for additional travel expenses when a special need is "[s]ubstantiated in writing by a competent medical authority." *Id.* 301-13.2(b). Those additional expenses can include other than coach-class accommodations or the services of an attendant. *Id.* 301-13.3(f)-(g).

With regard to airline accommodations, the FTR defines other than coach-class seating as business class, which is the next class above coach, and first class, which is above business class. FTR 301-10.121. The FTR provides the following:

- (b) [An] agency may authorize/approve business-class accommodations if any of the following apply:
 - (1) When use of other than coach-class is necessary to accommodate a medical disability or other special need.
 - (i) A disability must be certified annually in a written statement by a competent medical authority. However, if the disability is a lifelong condition, then a one-time certification statement is required. Certification statements must include at a minimum:

¹ Mr. Schneible's orders were amended on December 12, 2015, to allow for his arrival at an alternate destination.

- (A) A written statement by a competent medical authority stating that special accommodation is necessary;
- (B) An approximate duration of the special accommodation; and
- (C) A recommendation as to the suitable class of transportation accommodations based on the disability.

....

- (iii) If [an employee is] authorized to . . . have an attendant . . . [an] agency may also authorize the attendant to use other than coach-class accommodations.

Id. 301-10.123(b). The FTR sets forth similar requirements for first-class accommodations. *Id.* 301-10.123(a). A transferring employee's family members are subject to those same guidelines for the use of other than coach-class accommodations. *Id.* 302-4.100.

The Joint Travel Regulations (JTR), which also apply to Mr. Schneible, provide that “[a] traveler must use economy/coach accommodations unless other accommodations are authorized/approved.” JTR 2105. With regard to such accommodations for a medical condition or special need, the JTR states the following:

2. ‘Other than economy/coach’ accommodations may be authorized/approved . . . due to medical/special needs reasons only if a competent medical authority certifies that a disability/special need exists and, in the case of a medical need, the medical condition necessitates (for a specific time period or on a permanent basis) the accommodation upgrade. . . .
3. The ‘other than economy/coach’ [approving official] must be able to determine that, at the time of travel, ‘other than economy/coach’ accommodations are/were necessary because the traveler is/was so disabled/limited by special needs that other lower cost economy accommodations (e.g., ‘bulkhead’ seating, or providing two economy seats) cannot/could not be used to meet the traveler’s requirements.
4. An attendant . . . may be authorized/approved ‘other than economy/coach’ accommodations only when the attended traveler is

authorized 'other than economy/coach' accommodations use and requires attendant services en route.

Id. 2110-J.

Mr. Schneible complied with the requirements set forth in the FTR and JTR for other than coach-class seating for himself and his spouse. He submitted documentary evidence from competent medical authorities that assessed his spouse's various medical conditions. With regard to her physician who assessed her back and shoulder pain, he explained that it would be difficult for her to avoid pain during a long flight in coach-class seating due to her ongoing back and shoulder pain along with the added factors of her height and body build. That physician's assessment established that increased pain was the probable outcome of requiring Mr. Schneible's spouse to use coach-class seating. The physician's statement also indicated that other coach-class seating options, including a second seat and bulkhead seating, were not suitable alternatives. Additionally, Mr. Schneible presented evidence from a second physician that his spouse suffered from other severe medical problems that required him to be her attendant.

USACE contends that it properly exercised its discretion in denying Mr. Schneible's request for other than coach-class seating. An agency has discretion under the FTR and JTR to decide whether an employee should be allowed other than coach-class seating in an aircraft for medical reasons. *See Gemelia Restum*, GSBCA 16671-TRAV, 06-1 BCA ¶ 33,151, at 164,275 (2005). Such a determination by an agency will be upheld unless it is "arbitrary, capricious, or an abuse of discretion." *See Margaret M. Tardif*, GSBCA 16664-TRAV, 05-2 BCA ¶ 33,076, at 163,944. A physician's statement that supports an employee's request for other than coach-class seating establishes a prima facie case for such seating. *Gary Hopkins*, GSBCA 16667-TRAV, 05-2 BCA ¶ 33,026, at 163,670. It is an abuse of discretion for an agency to reject such medical evidence without findings from another physician who has either examined the employee or conferred with the employee's physician. *Id.*

USACE did not properly exercise its discretion when it rejected Mr. Schneible's request for other than coach-class seating because it made its determination without any contrary medical evidence to justify its finding. The extent of USACE's review was to question the likelihood that Mr. Schneible's spouse would suffer a worsening of her condition from coach-class seating, but that analysis ignored the physician's discussion of the extent to which Mr. Schneible's spouse had ongoing pain related to her shoulder and back. USACE also did not address the length of the flight. The physician's statement also addressed the fact that coach-class seating would not have been adequate under those circumstances. Although USACE argues that Department of the Army guidance required

further elaboration as to why coach-class seating options were not adequate, the Board finds that the physician's statement provided sufficiently detailed discussion as to why other than coach-class seating was necessary. Mr. Schneible and his spouse, consequently, should have been allowed business-class seating for their flight from South Korea, and USACE erred in not making a timely decision to allow such travel.

Mr. Schneible did not learn of USACE's decision to deny his request for other than coach-class seating until after his flight, and he purchased tickets for himself and his spouse through a source other than the Government's travel agent. It has been recognized that when an employee purchases tickets through a vendor other than a government travel agent, the Government will reimburse that employee up to the cost of purchasing that ticket through a government travel agent. *See Steven J. Maass*, GSBCA 16393-TRAV, 04-2 BCA ¶ 32,796, at 162,213. Such a result applies in this case. Mr. Schneible's reimbursement is limited to the cost of his tickets for business class had those tickets been purchased through a government travel agent.

Decision

The claim is granted, and this matter is remanded to the agency to determine the amount of reimbursement in accordance with this decision.

H. CHUCK KULLBERG
Board Judge