



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 11, 2016

CBCA 5110-RELO

In the Matter of PAMELA DEBERT MURRAY

Pamela DeBert Murray, APO Area Pacific, Claimant.

John Cooper Masterson, Legal Counsel, Naval Facilities Engineering Command Marianas, FPO Area Pacific, appearing for Department of the Navy.

WALTERS, Board Judge.

Claimant, Pamela DeBert Murray, a new appointee to the Naval Facilities Engineering Command Marianas, based in Guam, had submitted an appeal to this Board last year, under CBCA 4836-RELO, in conjunction with her move from Norfolk, Virginia, to Guam. Because no agency decision had been rendered on her claim, the appeal was not ripe for review and was dismissed on August 25, 2015, at the agency's request, to allow the agency to process the claim. Since that time, the agency rendered a decision on the claim and Ms. Murray indicates concurrence with the agency's denial of several elements of travel cost. She has reduced her claim accordingly, but our review in connection with a portion of the balance of her claim.

More specifically, Ms. Murray asserts that she is entitled to the \$464.71 difference between the amount paid her, \$182.27, and the total of her revised claim, \$646.98, which consists of: (1) seventy-five percent (75%) of the Guam per diem meals and incidental expense (M&IE) rate for February 23, 2015, the date of her departure from Norfolk, in the amount of \$63 (i.e., 75% of \$84); (2) one hundred percent (100%) of the Guam per diem lodging rate and associated eleven percent lodging tax rate for February 23, 2015, in the amounts of \$159 and \$17.49, respectively; (3) 100% of the Guam per diem M&IE rate by reason of her crossing the international dateline (IDL) on February 24, 2015, in the amount

of \$84; (4) 100% of the Guam per diem rates for both M&IE and lodging, together with the associated hotel lodging tax rate, for her arrival outside the continental United States (OCONUS) on February 24, 2015, in the amounts of \$84, \$159, and \$17.49, respectively; and (5) 75% of the Guam per diem M&IE rate for February 25, 2015, the date of her arrival in Guam, in the amount of \$63.

The amount the agency allowed and paid to Ms. Murray, \$182.27, included reimbursement for certain items not at issue, in addition to 75% of the Guam per diem M&IE rate for a single day of travel, in the amount of \$63. The agency maintains that Ms. Murray is not entitled to any more than the \$182.27 she has been paid.

Discussion

There seem to be two basic issues requiring resolution. First is Ms. Murray's contention that she is entitled to extra reimbursement for having crossed the IDL. The agency disagrees with Ms. Murray's position and indicates that, although she would have no entitlement in this case, because her trip was east to west, she will eventually be compensated for crossing the IDL when she returns home to Norfolk, traveling west to east. In terms of computing entitlement to travel benefits, the Board has previously discounted any differences in calendar dates created by moving across the IDL, one way or the other. In this regard, in our decision in *Karen Lynn*, CBCA 3437-TRAV, 13-1 BCA ¶ 35,421, *reconsideration denied*, 13-1 BCA ¶ 35,458, we specifically rejected the claim of an extra day of per diem reimbursement based on the employee's having crossed the IDL. We noted that both the Department of State Foreign Affairs Manual (FAM) and the Federal Travel Regulation (FTR) (which governs all federal employees, including Ms. Murray) make plain that, when an employee travels across the IDL, actual elapsed travel time is to be used to compute per diem entitlement, rather than calendar days. *Id.* at 173,770 (citing 14 FAM 573.3; 41 CFR 301-11.19 (2012)). The mere fact that the IDL was crossed is of no moment here and does not create additional entitlement for Ms. Murray.

The second issue to be resolved is the extent of per diem reimbursement for Ms. Murray's trip to Guam in February 2015. In defense of its having allowed her only \$63 of per diem, the agency explains: "[G]enerally, except in case of a forced overnight layover due to connecting flight schedule, a traveler from CONUS to Guam is paid one day travel per diem (day of arrival) in the amount of \$63.00. This amount represents 75% of the Full Guam Meal and Incidental Expense (M&IE) rate of \$84.00." It asserts further: "As evidenced by her itinerary, Ms. Murray did not experience any forced overnight layover during her February 23, 2015, 'east to west' trip from Virginia to Guam. Thus, Ms. Murray is entitled to only one day of per diem under the 75 percent of M&IE rule."

The agency is wrong in concluding that only a single day of per diem is appropriate here. It relies improperly on the provisions of the Joint Travel Regulation (JTR) that govern civilian employees of military departments, such as Ms. Murray. More particularly, the agency here invokes the JTR provisions for “same day travel,” JTR 5540, notwithstanding its own statement that, based on Ms. Murray’s travel itinerary, her “total travel time” was 26 hours. Claimant’s travel extended beyond twenty-four hours into a second day and ought not be considered “same day travel.” Under these circumstances, the extent of per diem reimbursement depends on whether lodging was required at any time during the trip. Because claimant confirms that lodging was not required on this trip while she was en route to Guam, another day of reimbursement at 75% of the Guam per diem rate for M&IE is in order. *See* JTR 5538: “[t]he 75% rate in par. 4065-A [MI&E] applies to . . . [d]eparture and arrival days at PDSs [permanent duty stations] . . .” Ms. Murray is entitled to another \$63 (75% of the Guam M&IE rate for the second day).

Ms. Murray might also have been entitled to reimbursement, as part of her per diem, for actual lodging cost up to the per diem lodging rate for any stopover location, had she required lodging en route from Virginia to Guam. JTR 4075-A. In this regard, there was some confusion as to whether or not any en route hotel lodging had been necessary, based on the following statement in an email from Ms. Murray dated January 29, 2016:

(2) Hotel Bill: my bank statement (attached) shows I paid for hotels on the dates I traveled, if itemized statements are necessary, I should be able to request them from the hotels.

In response to the Board’s inquiries, however, Ms. Murray confirmed that the only hotel lodging she had in connection with her trip was: (1) in Norfolk for the night of February 22, 2015, prior to her February 23, 2015, departure on an early morning (7 a.m.) flight; and (2) subsequent to her arrival in Guam at 12:31 a.m. on February 25, 2015. Ms. Murray did not explain why she needed to book a room at the Norfolk hotel on February 22, 2015, given that her home of record was in close proximity to the Norfolk International Airport. And although she sought to explain the need for a hotel in Guam based on her late arrival there, her flight into Guam was just over an hour beyond the arrival time specified on her flight itinerary, 11:25 p.m. Moreover, from that hotel’s email reservation confirmation (a copy of which she furnished to the Board), it is clear that she had booked the hotel for both that night (February 24, 2015) and for the following night (February 25, 2015) on February 5, 2015, i.e., well in advance of her departure from Norfolk. In any event, the expenses she incurred for hotel lodging in both instances were not for stopover lodging en route to Guam and are not reimbursable as part of per diem.

Decision

We find claimant entitled to further reimbursement of \$63.

RICHARD C. WALTERS
Board Judge