



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 11, 2017

CBCA 5423-RELO

In the Matter of MARK A. MENDENHALL

Mark A. Mendenhall, Reston, VA, Claimant.

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

KULLBERG, Board Judge.

Claimant, Mr. Mark A. Mendenhall, seeks relief from a debt-collection action, in the amount of \$3717.46, by the United States Army Corps of Engineers (USACE). USACE contends that Mr. Mendenhall improperly received per diem from November 16 to December 12, 2015, while on temporary duty (TDY) in Washington, D.C. For the reasons stated below, the claim is denied.

Background

Mr. Mendenhall was assigned to his former permanent duty station (PDS) in Boise, Idaho, when USACE issued TDY orders that assigned him to a detail in Washington, D.C., from March 4 to August 30, 2015, with the Energy and Water Subcommittee of the United States Senate Committee on Appropriations. On August 28, 2015, USACE extended his TDY to December 31, 2015. Mr. Mendenhall has represented that his duties while on TDY “included development of the [fiscal year 2016] Energy & Water Appropriations Bill and Report.” His detail was to continue until “passage of the . . . Omnibus bill (PL 114-113), which became law on 18-Dec-2015.”

On or about October 8, 2015, USACE advised Mr. Mendenhall tentatively that he had been selected for a position at its headquarters in Washington, D.C. (USACEHQ). Mr. Mendenhall signed a transportation agreement on November 16, 2015, which recognized that his new PDS would be in Washington, D.C. On December 1, 2015, USACE issued permanent change of station (PCS) orders that transferred Mr. Mendenhall to USACEHQ with a reporting date of December 13, 2015. His orders provided for temporary quarters subsistence expenses (TQSE) for a period of sixty days (actual expenses), and an amendment to his orders provided for an additional thirty days of TQSE. Mr. Mendenhall continued his detail with the Senate subcommittee until December 12, 2015. He reported to USACEHQ on December 13, 2015.

Mr. Mendenhall claimed and received reimbursement for his per diem while on TDY, which included the period from November 16 to December 12, 2015. USACE subsequently conducted an audit that determined the following:

The audit performed for the overpayment of per diem and expenses for travel vouchers 18, 19, and 20 for dates November 16 through December 12, 2015, is based on Joint Travel Regulations [JTR] Chapter 4, Part H: 4805: When TDY Station becomes PDS, payment of per diem stops on (i.e. is not paid on or after) the date the employee receives notice that the TDY station becomes the PDS. Audit support reconstructed the return date on voucher 18 to November 16, 2015 to Boise, ID. This created debts owed to US Government for the three vouchers in the amount of \$3717.46.

In his claim, Mr. Mendenhall stated that “the USACE . . . determination that my TDY should have ended upon [the] signing of my transportation agreement versus the effective PCS date, does not take into account the orders directing my assignment to the Senate and, most importantly, the nature of the duties assigned.”

Discussion

The issue in this matter is whether USACE properly assessed a debt against Mr. Mendenhall for an overpayment of per diem under his TDY orders for the period from November 16 to December 12, 2015. Statute provides that “an employee, when traveling on official business away from the employee’s designated place of duty . . . is entitled to . . . a per diem allowance at a rate not to exceed that established by the Administrator of General Services.” 5 U.S.C. § 5702(a)(1) (2012). The Federal Travel Regulation (FTR), which applies to Mr. Mendenhall, provides that an employee is eligible to receive per diem while “perform[ing] official travel away from [his or her] official station.” 41 CFR 301-11.1(a) (2015) (FTR 301-11.1(a)). An employee’s entitlement to per diem ends when he or she

“return[s] to [his or her] home, office or other authorized point.” *Id.* 301-11.9. The Joint Travel Regulations (JTR), which also apply to Mr. Mendenhall, state, in pertinent part, the following:

A. Notification of Change from TDY Station to PDS

1. Coordinate the employee’s TDY assignment with the change in PDS notice.
2. Allow the employee time to return to the old PDS to arrange for a residence sale, dependent(s) and /or [household goods (HHG)] transportation, and to perform PCS travel to the new PDS to report for duty on the PCS effective date.

B. Per Diem Allowance

1. Payment of per diem stops on (i.e., is not paid on or after) the date the employee receives notice the TDY station becomes the PDS.
2. Per Diem is paid if the employee performs a TDY at the new PDS before the transfer effective date, and the TDY is terminated by a return to the old PDS, at which the employee performs substantial duty. For example, notice is received on 1 September 2008, TDY is 4-6 September 2008, and the transfer effective date is 30 September 2008 (B-214966, 27 December 1984).

C. PCS Allowance. The employee is authorized PCS allowances provided the transfer is in the [Government’s] interest. See par. 5520 for mandatory and discretionary allowance that may be authorized.

JTR 4805.

The Board’s discussion, accordingly, turns to whether Mr. Mendenhall’s execution of his transportation agreement was notice that his TDY location had become his PDS. Statute provides that “[a]n agency may pay travel and transportation expenses . . . and other relocation allowances . . . when an employee is transferred within the continental United States only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned.” 5 U.S.C. § 5724(i). It has been recognized that an employee’s execution of such an agreement to remain in government service after a transfer is evidence of notice that his TDY location has become his new PDS. *See John W. Corwine*, B-203492

(Dec. 7, 1982); *Neil E. Wersing*, B-199612 (Jan. 15, 1981). This Board has recognized that entitlement to per diem ends upon receipt of such notice. See *Charles R. Wheeler*, CBCA 5327-TRAV, 16-1 BCA ¶ 36,574, at 178,125. Mr. Mendenhall's entitlement to per diem under his TDY orders, consequently, ended when he executed his transportation agreement and, consequently, acknowledged that his new PDS was at USACEHQ.

Mr. Mendenhall argues that the Board should consider the nature of his duties during his TDY assignment, which, apparently, precluded him from returning to his former PDS. The JTR, however, only allows receipt of per diem after receipt of notice that the TDY location has become the employee's PDS if the employee returns to his or her former PDS and performs substantial duty before the effective date of transfer. JTR 4805-B.2. That exception does not apply in this case. While it is unfortunate that Mr. Mendenhall found himself in such a situation in which he was not entitled to receive per diem after he signed his transportation agreement, the Board would note that its decision in this matter only relates to his entitlement to per diem under his TDY orders, and the Board does not address the question of whether he is entitled to any other allowances related to his PCS during any portion of the period from November 16 to December 12, 2015.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge