



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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October 24, 2018

CBCA 6073-TRAV

In the Matter of FRANK A. BALISH

Frank A. Balish, Roaring Brook Township, PA, Claimant.

Connie J. Rabel, Director, Travel Mission Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

**KULLBERG**, Board Judge.

Claimant, Mr. Frank A. Balish, seeks reimbursement of per diem for a rest period of twenty-four hours after arriving at his temporary duty (TDY) location in Hawaii. The Board's previous decision, *Frank A. Balish*, CBCA 5862-TRAV 18-1 BCA ¶ 36,991, remanded his claim to the agency for further review consistent with that decision. The agency, Department of the Army (Army), again denied his claim. For the reasons stated below, the Board denies the claim.

Background

On September 19, 2016, the Army issued TDY orders for Mr. Balish to travel from his permanent duty station at the Tobyhanna Army Depot (Tobyhanna), Pennsylvania, to the Barking Sands Naval Station, Kauai, Hawaii, for a TDY period of nine days with a proceed date of October 1, 2016 (Saturday). His duty at his TDY location began at around 7:00 a.m., on Monday, October 3.

Before his departure, the Army advised Mr. Balish that he could take a flight to Hawaii on October 2, 2016, that arrived at 4:52 p.m. Instead, Mr. Balish took a flight that departed on October 1, 2016, and arrived at 7:14 p.m. Both flights involved travel in excess of fourteen hours. Although Mr. Balish's request for travel orders included a one-day rest period on October 2, 2016, his TDY orders did not authorize a rest period.

Upon returning from his TDY, Mr. Balish submitted a claim that included per diem for October 2, 2016, which he claimed as a rest period. The Army denied that portion of his claim because more than twenty-four hours elapsed between his arrival and when he reported for duty at his TDY location. Mr. Balish submitted his claim to the Board for his per diem for October 2, 2016, and contended that he was entitled to a rest period of twenty-four hours after his arrival.

The Board held that "Mr. Balish's entitlement to a rest period should be based upon a standard of reasonableness as opposed to a rigid requirement that he arrive within twenty-four hours before reporting for work at his TDY location." *Frank A. Balish*, 18-1 BCA at 180,157. Additionally, the Board noted that "[a]lthough Mr. Balish's orders did not specifically provide for a rest period . . . an agency has the discretion to authorize such a rest period." *Id.* Finally, the Board remanded Mr. Balish's claim to the Army to determine his entitlement to a rest period in accordance with that decision.

The Army again considered Mr. Balish's claim for a rest period. In an email dated March 13, 2018, the Army denied Mr. Balish's claim, finding that he had chosen a flight that departed on Saturday, October 1, 2016, as a matter of "personal convenience," and noted that "[t]he agency originally identified a departing flight on Sunday, which provided . . . an adequate rest period." In response to the Army's decision, Mr. Balish again submitted his claim to the Board.

### Discussion

The issue before the Board is whether the Army properly exercised its discretion in its denial of Mr. Balish's claim upon the remand of this matter. The requirements for a traveler's entitlement to a rest period either during or after a flight in excess of fourteen hours are set forth in the Federal Travel Regulation (FTR) and Joint Travel Regulations (JTR). 41 CFR 301-11.20 (2016) (FTR 301-11.20); JTR 4415-D. This Board has recognized that those FTR and JTR sections provide that an agency "'may authorize,' not 'must authorize,' a rest stop." *Patrick Mangan*, CBCA 1788-TRAV, 10-2 BCA ¶ 34,464, at 170,025. In exercising such discretion, the Board recognized that it would be reasonable to allow such a rest period so that an employee is not be required to "arrive 'late at

night . . . [without] a sufficient period of rest before reporting for work.” *Frank A. Balish*, 18-1 BCA at 180,157 (quoting *Kathleen Pinette*, 72 Comp. Gen. 3, 5-6 (1992)).

In this case, the Army has shown that it offered Mr. Balish a flight to Hawaii that departed on Sunday, October 2, 2016, and arrived at 4:52 p.m. The Army contends that Mr. Balish would have had a sufficient amount of time for rest before reporting for duty at his TDY location the next day. Instead of taking that flight, Mr. Balish chose a flight that left a day earlier, and he did so as a matter of personal convenience. For those reasons, the Army again denied Mr. Balish’s claim. Mr. Balish has not shown that the Army’s position is unreasonable, and the Board finds that the Army properly exercised its discretion in this matter.

Finally, Mr. Balish argues that his request for TDY orders showed October 2, 2016, as a rest day. Mr. Balish’s argument is of no avail because his TDY orders did not authorize such a rest period, and those orders determined “the conditions, in writing, under which official travel and transportation are authorized at Government expense.” *Andre E. Long*, GSBICA 14498-TRAV, 98-1 BCA ¶ 29,731, at 147,387.

### Decision

The claim is denied.

*H. Chuck Kullberg*  
H. CHUCK KULLBERG  
Board Judge