UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 31, 2018

CBCA 5861-TRAV

In the Matter of WILLIAM V. KINNEY

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LESTER, Board Judge.

Claimant, William V. Kinney, is a federal air marshal (FAM) employed by the Federal Air Marshal Services (FAMS) within the Transportation Security Administration (TSA), Department of Homeland Security. As part of his position, Mr. Kinney often engages in international temporary duty travel (TDY). At the outset of each of those trips, he drives his privately-owned vehicle (POV) from his residence to his office before departing on a government-provided shuttle for the airport, and he returns to his office by shuttle at the end of each trip to retrieve his POV before driving back to his residence.

Through his claim before the Board, Mr. Kinney seeks payment of expenses that, over the course of twenty-six international trips from July 2016 to March 2017,[1] he incurred in

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[1] In his original submission, Mr. Kinney indicated that he had taken twenty-seven international trips from July 2016 to March 2017, but, in subsequently submitted documentation intended to detail those trips, we could identify only twenty-six. For purposes of this decision, we rely upon the number of trips supported by documentation in the record.

traveling from his residence to his office at the outset of international TDY (prior to departing from the office for the airport) and upon his return in traveling back from the office to his residence. Mr. Kinney argues that, because his "travel status begins and ends at his residence," he is entitled to reimbursement of those travel costs and that "stopping by [the duty station field office] does not negate that fact." Claim at 3. TSA views Mr. Kinney's trips to and from the office prior to departing on and when returning from TDY as commuting, rather than travel, and asks that we deny the claim in its entirety.

To correspond with travel policy changes that the agency periodically implemented during the July 2016 to March 2017 claim period, we must break Mr. Kinney's claim into three distinct time periods. For the reasons set forth below, we remand consideration of costs incurred during the first claim period to the agency for further review, grant recovery of return office-to-residence travel costs for the second claim period, and deny Mr. Kinney's claim in its entirety for the third claim period.

Background

On scheduled departure days for international TDY, federal air marshals (FAMs) assigned to the Chicago Field Office (CFO) must travel from their personal residences to the CFO, where they perform official duties before being taken on a shuttle to the airport. Any FAM who uses his or her POV to get from his or her residence to the CFO for official pre-travel work duties can park the POV in the CFO parking lot, where it remains while the employee is on international TDY. Upon returning from international TDY, those FAMs return by shuttle from the airport to the CFO parking lot, retrieve their POVs, and proceed to their personal residences. Nothing in the record here suggests that, when stopping at the CFO on return travel to retrieve their POVs, the FAMs are required to perform any work at the office before returning home.

TSA informs us that, for purposes of travel reimbursement, the CFO deems international travel (and entitlement to travel costs) to commence when a FAM departs from the CFO for the airport, rather than when the FAM departs from a personal residence en route to the CFO prior to departure for the airport, and it deems travel to end when the FAM returns to the CFO to pick up his or her POV. Mr. Kinney disagrees with the CFO's reimbursement practice, believing that the agency should consider travel to begin when the FAM departs from his personal residence and to conclude when he returns home. Mr. Kinney seeks reimbursement for transportation expenses of $903.06, which he claims he incurred driving his POV between his personal residence and the CFO between July 2016 and March 2017 on days on which he was departing or returning from international TDY. The claimed amount, Mr. Kinney alleges, "is an amount based off of miles driven and current mileage rates, plus an amount to reimburse him for the tolls he incurred as a part of those

miles." Mr. Kinney also requests a late payment fee or interest if the Board finds entitlement to reimbursement of these costs.

In February 2017, Mr. Kinney filed a grievance with TSA's National Resolution Center pursuant to the TSA Human Capital Management (HCM) policy, HCM 771-4, and its related Handbook. In his grievance, Mr. Kinney asserted that the FAMS was mismanaging the mileage and toll reimbursement policy, as set forth in TSA Management Directive 1000.6 (TSA MD 1000.6), the Federal Aviation Administration Travel Policy (FAATP), and the Federal Travel Regulation (FTR), by refusing to reimburse him certain transportation expenses on international missions. His grievance was denied.[2]

Subsequently, Mr. Kinney, through counsel, submitted his claim to the Board.

Discussion

The FTR Does Not Apply To Mr. Kinney's Travel

Mr. Kinney asserts that the agency's policy violates various provisions of the FTR, which he interprets as entitling him to reimbursement for costs that he has incurred when beginning travel from his personal residence to the CFO and, upon his return, from the CFO to his personal residence. "The FTR is issued by the Administrator of General Services to implement chapter 57 of title 5, United States Code," and it sets forth rules governing "travel, transportation, and subsistence expenses of federal civilian employees." *Jimmy D. Graves*, CBCA 963-TRAV, 08-1 BCA ¶ 33,805, at 167,343.

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[2] The grievance process does not appear to be part of any kind of collective bargaining agreement that would preclude our authority to review Mr. Kinney's claim. *See David P. Meyer*, CBCA 6097-TRAV, 18-1 BCA ¶ 37,081, at 180,491 (discussing how, depending upon the language of a collective bargaining agreement, a grievance process can become a covered employee's sole and exclusive procedure for resolving a travel claim). Further, we are aware of no requirement that we defer in any way to findings made through the grievance process. Our authority for resolving travel claims derives from statute and a delegation from the Administrator of General Services, who Congress authorized to "settle claims involving expenses incurred by Federal civilian employees for official travel and transportation." 31 U.S.C. § 3702(a)(3) (2012). Although an agency may voluntarily choose to create an internal grievance process, that election does not limit or usurp the Administrator's statutory authorization or require the Administrator (or the Board in its role as the delegate of the Administrator) to defer to findings resulting from the agency's process.

The FTR does not apply in the circumstances here. When FAMS was created in 1985, it was originally placed under the authority of the FAA. In legislation that became effective April 1, 1996, Congress directed the FAA to "develop and implement . . . a personnel management system for the [FAA]," inclusive of the FAA's own personnel and travel policies, "that addresses the unique demands on the agency's workforce." Pub. L. 104-50, § 347, 109 Stat. 436, 460 (1995) (now codified at 49 U.S.C. § 40122(g)(1) (2012)). With limited exceptions not applicable here, Congress specifically provided that "the provisions of title 5 [of the United States Code] shall not apply to the [FAA's] new personnel management system." *Id.* (now codified at 49 U.S.C. § 40122(g)(2)); *see* H.R. Rep. No. 104-475, at 25 (1996) (stating that, in the statute, Congress "exempt[ed] the [FAA] from most personnel and procurement laws that apply to other government entities and permitt[ed] the FAA to develop its own personnel and procurement systems, subject to Congressional review"). As such, except to the extent that the FAA has voluntarily chosen to adopt a particular FTR provision or policy, *see* 49 U.S.C. § 106(l)(3) (authorizing the FAA, at its election, to pay transportation expenses in accordance with chapter 57 of title 5), the FTR is inapplicable to FAA employee travel and relocation claims. *See, e.g.*, *James S. Hartley*, GSBCA 16390-RELO, 04-2 BCA ¶ 32,717, at 161,873; *Tracy Jones*, GSBCA 15659-TRAV, 02-1 BCA ¶ 31,687, at 156,562 & n.1 (2001); *James W. Respess*, GSBCA 15532-RELO, 01-2 BCA ¶ 31,450, at 155,314. Implementing his statutory authority, the FAA Administrator issued the Federal Aviation Administration Travel Policy (FAATP), which now defines and controls FAA employee travel and relocation entitlements. *Chauncey E. Ford*, GSBCA 16728-RELO, 06-1 BCA ¶ 33,166, at 164,354 & n.1 (2005); *Keith E. Kuyper*, GSBCA 15839-RELO, 02-2 BCA ¶ 31,983, at 158,081; *Alan D. Hendry*, GSBCA 15585-RELO, 01-2 BCA ¶ 31,535, at 155,706.

In November 2001, Congress enacted the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, 115 Stat. 597 (2001), through which it transferred the FAA's civil aviation security functions (including FAMS) to the newly-created TSA, which, like the FAA, was placed under the auspices of the Department of Transportation. 49 U.S.C. § 114. In the ATSA, Congress directed that "[t]he [FAA] personnel management system," rather than the FTR, "shall apply to employees of [TSA]," although it also permitted "the [TSA] Under Secretary [to] make such modifications to the [FAA] personnel management system with respect to [TSA] employees as the Under Secretary considers appropriate, such as adopting aspects of other personnel systems of the Department of Transportation." *Id.* § 114(n); *see Damon Pfalmer*, CBCA 1314-RELO, 09-1 BCA ¶ 34,074, at 168,480 (applying the FAATP to TSA employee claim), *vacated on other grounds*, 09-2 BCA ¶ 34,164. Although Congress, through the Homeland Security Act of 2002, subsequently transferred responsibility for TSA to the Department of Homeland Security (DHS), *see* 6 U.S.C. §§ 203,

234,[3] Congress did not alter the statutory direction applying the FAA's personnel management system to TSA, subject to TSA's right to adopt its own modifications to those policies and procedures.

TSA, as permitted by statute, has adopted its own policies regarding TDY travel, the most recent of which are contained in TSA MD 1000.6, effective March 27, 2015, and TSA's Office of Finance and Administration Letter No. OFA-16-002 (OFA Letter 16-002), effective October 2, 2016. The Assistant Administrator and Chief Financial Officer (OFACFO) for TSA's Office of Finance and Administration signed and issued both of those policies, which apply to all TSA employees. Section 6.A of TSA MD 1000.6 establishes that "TSA generally follows the FAATP, Chapter 301," except to the extent that TSA has "clearly identified" policy deviations within that TSA directive. TSA MD 1000.6, § 6.A. TSA MD 1000.6 also authorizes the Assistant Administrator for Law Enforcement/Director of [FAMS] to establish "additional travel policy for FAMs in coordination with the Financial Management Division (FMD)." *Id.* § 5.B. The FAMS Assistant Administrator has done so through the issuance of a policy letter, Office of Law Enforcement (OLE) 3410, Domestic and International Mission Travel (Pre-Deployment Requirements), dated May 5, 2015, that was in effect at the beginning of the time period covered by Mr. Kinney's claim. OLE 3410 was amended and reissued on December 15, 2016 (during the time period covered by Mr. Kinney's claim), followed by, on January 31, 2017, approval by the OFACFO of a waiver for FAMS of certain TSA local day-of-travel transportation reimbursement policies that would otherwise conflict with OLE 3410.

Our predecessor board for travel and relocation matters recognized that "TSA is authorized to implement its own travel regulations independent of the FTR" and that "the Board will look to those regulations as the primary source for resolving a disputed travel claim involving that agency's employees." *Andrew J. Kohl*, GSBCA 16869-TRAV, 07-1 BCA ¶ 33,447, at 165,788 (2006). Although, in appropriate circumstances, the Board may look to the FTR for guidance in interpreting TSA policies or in determining the proper manner of calculating reimbursement, *see Alfonso Diaz del Castillo*, CBCA 2250-TRAV, slip op. at 3-4 (June 21, 2011), it is the TSA policy that controls TSA employees' entitlement to travel costs. The claimant has the burden to show entitlement to the travel costs that he seeks by reference to applicable written TSA policies, rather than the FTR. *Vanderpool v. United States*, 84 Fed. Cl. 66, 84 (2008); *see Andrew J. Kohl*, 07-1 BCA at 165,788 ("TSA is not required to conform to the provisions of the FTR.").

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[3] In late 2003, shortly after TSA moved to DHS, FAMS was separated from TSA and realigned into United States Immigration and Customs Enforcement, but, in October 2005, it returned to TSA.

Travel Expenses to and from Mr. Kinney's Residence

I. The Period from July to September 2016

Mr. Kinney's claim encompasses twenty-six separate trips that he took between July 2016 and March 2017. At the outset of that claim period, a version of TSA MD 1000.6 dated March 27, 2015, issued by the OFACFO, was in effect, as was OLE 3410, which the FAMS Assistant Administrator had issued on May 5, 2015. Twice between July 2016 and March 2017, TSA issued changes to its various policies governing FAMS travel that affect Mr. Kinney's day-of-travel local transportation expense entitlements. To account for all of Mr. Kinney's trips, we break Mr. Kinney's entitlements down into the time periods during which these different policies were in effect. We first address Mr. Kinney's entitlements under the policy that was in effect from the beginning of July 2016 through the end of September 2016, during which time Mr. Kinney traveled eleven times on international TDY.

As previously mentioned, section 6.A of TSA MD 1000.6 provides that "TSA generally follows the FAATP, Chapter 301," but that "[i]nstances where TSA policy deviates from the FAATP are clearly identified" in TSA MD 1000.6 itself. The FAATP sets forth a series of rules regarding reimbursement of day-of-travel local transportation expenses incurred when an employee departs for and returns from TDY travel, *see* FAATP 301-10.23, -10.309, -10.310, and TSA MD 1000.6 does not clearly identify any deviations to those rules as they apply to FAMS.[4] Given that TSA MD 1000.6 applies the FAATP absent a "clearly identified" deviation set forth in TSA MD 1000.6 itself, we agree with Mr. Kinney that the FAATP rules apply to this travel claim period.

The FAATP provides that the agency will pay the cost that an employee incurs traveling from his or her residence to a common carrier terminal when commencing TDY travel, as well as the return cost from the common carrier terminal when the employee comes home at the end of TDY travel. FAATP 301-10.23, -10.309. If the employee commences travel from his or her permanent duty station (PDS) rather than his or her residence, though, the agency will pay the cost of round-trip travel by POV between the employee's residence and his or her office if, and only if, the employee is "authorized transportation from [the] residence to [the] office on the day [the employee] begin[s] travel," *or* "from [the] office to [the] residence on the day [the employee] return[s] from travel," "as provided in

[4] Although TSA MD 1000.6 expressly defines the term "travel status" for travel policy purposes, the directive states that the section defining that term "does not apply to FAMS mission travel." TSA MD 1000.6, § 6.B. The directive does not subsequently provide a "travel status" definition for FAMS.

§ 301-10.24(c).” FAATP 301-10.310. Under FAATP 301-10.24(c), transport costs between the employee’s residence and the office are authorized if the employee meets all of the following conditions:

> You require transportation on the day you depart for travel and:
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> (1) Your trip will last two or more days (requiring at least one night’s lodging);
> (2) You are not able to perform your commute by your normal mode of transportation; and
> (3) Your use of the alternate mode of transportation results in an increase in your commuting costs.

FAATP 301-10.24(c); *see id.* 301-10.24(d) (imposing a similar requirement for transportation incurred on return TDY days from the office to the residence, with recovery limited to situations in which the employee’s travel costs exceeded normal commuting costs because of a need to travel by other than the normal mode of transportation).[5]

Applying FAATP 301-10.24(c) to Mr. Kinney’s travel between July and September 2016, it is clear that Mr. Kinney needed, and was authorized, transportation from his residence on international TDY days and that his trips required at least one night’s lodging. The record does not tell us, however, whether, during any of his eleven trips from July to September 2016, Mr. Kinney needed to use a different method of travel from his residence to the office on international TDY travel days than he used on regular commuting days or whether such costs were higher than on regular commuting days. Only if, by necessity, the cost of getting from his residence to the CFO on international TDY travel days exceeded his

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[5] The FAATP approach is fairly consistent with the FTR, which, because employees are normally “expected to get to and from their posts of duty on their own time and at their own expense,” *Guenther Moehrke*, B-252142 (July 6, 1993), generally precludes agencies from “reimburs[ing] an employee for mileage expenses incurred when commuting.” *Orlando Sutton*, CBCA 2781-TRAV, 12-2 BCA ¶ 35,072, at 172,268 (citing cases). Like the FAATP, though, the FTR permits agencies, in their discretion, to deal with increased costs, beyond regular commuting costs, that employees may incur in getting to the office on TDY travel days that are necessitated by the impending travel. *Kenneth R. Chaney*, CBCA 3220-TRAV, 13 BCA ¶ 35,304, at 173,290; *see Lloyd Chynoweth*, B-203978 (Mar. 11, 1982) (grant of discretionary authority in the FTR “is in recognition of the fact that an employee may incur additional expenses, above the ordinary commuting cost for which he should be reimbursed on days he departs from his office on an official trip requiring at least one night’s lodging”).

normal commuting costs would Mr. Kinney be entitled to reimbursement for that travel. We remand this issue to TSA to allow Mr. Kinney to identify whether, for any of his eleven international TDY trips during this period, his costs of traveling to the CFO exceeded his regular costs of commuting to the CFO.[6]

TSA argues that we should not apply the FAATP reimbursement policies because, during this period, the FAMS Assistant Administrator had in place a separate policy, OLE 3410, that was unique to FAMS and expressly precluded recovery of residence-to-CFO and CFO-to-residence travel costs on international TDY days. TSA asserts that section 6.S of TSA MD 1000.6 entitles local TSA offices, like the CFO, to "establish local travel policies and procedures for their particular circumstances" that "may be used to formalize and define the discretionary provisions in this directive," TSA MD 1000.6, § 6.S, and that section 5.B expressly authorizes the FAMS Assistant Administrator to "establish[] additional travel policy for FAMs in coordination with the Financial Management Division (FMD)." *Id.* § 5.B.

Yet, the day-of-travel local transportation reimbursement provision in OLE 3410 to which TSA refers directly *conflicts* with the FAATP provisions that, through section 6.A of TSA MD 1000.6, TSA adopted as its own. Although TSA MD 1000.6 grants the FAMS Assistant Administrator discretionary authority to establish *additional* travel policy, that authorization does not justify the adoption of *inconsistent* policies effectively trumping or rendering ineffective the FAATP provisions that TSA had made applicable to all of its employees. *See Frank J. Salber*, GSBCA 16836-RELO, 06-2 BCA ¶ 33,330, at 165,286 (sub-agency can issue travel policy that supplements and explains main travel regulations, but not one that is inconsistent with them); *Random House Webster's Unabridged Dictionary* 23 (2d ed. 2001) (defining "additional" as "added; more; supplementary," rather than contradictory). Similarly, by authorizing local offices to issue travel policies that "formalize and define the discretionary provisions" of TSA MD 1000.6, section 6.S of TSA MD 1000.6 allows local offices to adopt policies that supplement, but are not inconsistent with, those portions of the FAATP that TSA has adopted through section 6.A.

TSA also argues that section 6.T of TSA MD 1000.6 allows TSA Assistant Administrators to "request a waiver or exemption to TSA travel policy in order to meet mission critical operational requirements." TSA MD 1000.6, § 6.T. Yet, TSA has identified no approved waiver by the OFACFO applicable to this period of time.

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[6] We recognize that TSA has asserted that Mr. Kinney is seeking only his normal commuting costs, but it is unclear whether Mr. Kinney agrees with TSA's assertion. Because the record does not address this point, we find remand on this issue appropriate.

Because FAMS did not obtain any waiver from the necessary authority pursuant to section 6.T to modify existing policy during this period, and because OLE 3410 conflicts with otherwise established TSA local travel policy, FAMS cannot rely upon OLE 3410 to preclude entitlement to reimbursement during this period. *See C.P. Squire Contractors, Inc. v. United States*, 224 Cl. Ct. 765, 769 (1980) (action outside the scope of a government employee's delegated authority is not enforceable).

II. October 2016 to January 2017

On October 1, 2016, TSA's OFACFO issued OFA Letter 16-002, which expressly addresses day-of-travel local transportation expenses and serves as a supplement to TSA MD 1000.6. That supplement provides that TSA can deny requests for day-of-travel local transportation expenses if, among other things, "[t]he employee performs work before traveling (departure day) or after the completion of TDY (return day)." OFA Letter 16-002, § 1.C(2)(c). Nevertheless, "[i]f the traveler performs work on the departure day but not on the return day, local travel expenses on the day of official travel may be reimbursed for the return day only." *Id.* § 1.C(2)(c)(iii). Further, sections 3 and 5 of the supplement provide that "[t]ravelers may be reimbursed for transportation expenses to reach his or her PDS, or other TSA facility, to obtain a [government-owned vehicle (GOV)] and transportation expenses incurred to return to his or her residence from his or her PDS . . . after the completion of TDS and returning the GOV," *id.* § 3, and that they "may be reimbursed for POV expenses to reach his or her POV . . . to pick up personnel or equipment required for official TDY." *Id.* § 5.

In light of TSA's statutory authority, the policies set forth in OFA Letter 16-002 override any conflicting provisions in the FAATP. We reject Mr. Kinney's request to apply the FAATP to his travel claim during this period of time. To the extent that Mr. Kinney argues that OFA Letter 16-002 is ineffective because TSA did not add the policies stated therein into TSA MD 1000.6 and then reissue that directive, we reject that argument. Even though section 6.A of TSA MD 1000.6 indicates that "[i]nstances where TSA policy deviates from the FAATP are clearly identified" in TSA MD 1000.6 itself, both TSA MD 1000.6 and OFA Letter 16-002 were issued by the same authority – the OFACFO – and the prefatory language in OFA Letter 16-002 makes clear that the OFACFO intended it as a revision and supplement to TSA MD 1000.6. Given the clarity of the OFACFO's intent and purpose in issuing OFA Letter 16-002, we will not undermine that intent through an overly formulistic interpretation of TSA MD 1000.6's language.

Applying OFA Letter 16-002 to Mr. Kinney's situation, Mr. Kinney is not entitled to day-of-departure transportation expenses from his residence to his office because, since he must perform work at the office before leaving on international TDY, the policy expressly

bars recovery of those costs. Nevertheless, he is entitled to day-of-return expenses from his office to his residence because, after he returns from the common carrier terminal to the office in government-provided transportation, he performs no work at the office before returning home in his POV.[7]

The record indicates that Mr. Kinney commenced a total of ten international TDY trips between October 2016 and January 2017. Nevertheless, because the record does not indicate how Mr. Kinney calculated his return travel costs, we must remand this matter to the agency for further review. To the extent that Mr. Kinney paid tolls in driving from the CFO to his residence on his day of return and can substantiate those payments, he is entitled to reimbursement of them, in addition to mileage.

III. February to March 2017

As previously mentioned, section 6.T of TSA MD 1000.6 allows TSA Assistant Administrators to "request a waiver or exemption to TSA travel policy in order to meet mission critical operational requirements." In December 2016, the FAMS Assistant Administrator issued a revised version of OLE 3410 to "establish[] domestic and international mission travel policy and procedures" for FAMS. OLE 3410, ¶ 3. That policy document contains the following provision:

> FAMs that are required to stop at a Field Office or Headquarters location before an international mission for the pre-flight briefing are only permitted to receive mileage reimbursement from the duty station to the airport and from the airport to the residence at the conclusion of the mission. Mileage reimbursement from the residence to the duty station for the pre-mission briefing is not authorized. Stops to the field office at the conclusion of the mission also negate mileage reimbursement from the field office to the residence.

Id. ¶ 8.D. At the same time, the FAMS Assistant Administrator submitted a request to the OFACFO pursuant to section 6.T of TSA MD 1000.6, seeking a waiver allowing FAMS to opt out of sections 3 and 5 of the recently adopted OFA Letter 16-002 and to enforce its own day-of-travel local transportation expenses policy. The OFACFO approved the waiver request on January 31, 2017.

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[7] For the same reasons that we declined to apply the day-of-travel local transportation cost restrictions contained in OLE 3410 to the July to September 2016 travel period, we decline to apply them to the October 2016 to January 2017 travel period.

The intent behind FAMS' policy is clear: FAMS does not intend to provide reimbursement of any expenses incurred for traveling between an employee's residence and the CFO. Although Mr. Kinney argues that his travel status "begins and ends at his residence and stopping by the CFO does not negate that fact," Claim at 3, he has identified no basis for overcoming the new FAMS policy that the OFACFO approved through his waiver authorization on January 31, 2017. Any confusion about whether Mr. Kinney's travel authorization permits departure from his residence, which could result from a unique blanket method that FAMS uses to authorize FAM travel, is clarified by the language in OLE 3410.

Mr. Kinney asserts that he does not actually "stop" at the CFO on his return from international TDY. Instead, he says, he "is picked up by a government owned vehicle and transported to his POV" outside the CFO after which he "then drives directly home," Reply at 6, and therefore is not covered by the preclusion on mileage reimbursement following "[s]tops to the field office" under paragraph 8.D of OLE 3410. We recognize that, when applying the FTR, we have sometimes found that, if an employee merely stops by his office building on the way to or from the airport without going inside or performing any work, he may still be entitled to travel expenses starting from the time he departed his residence or until his return there if the stop was merely for convenience as a continuous part of the travel process – for example, where the employee drove to his office site to get on an airport shuttle or to pick up a Government vehicle to be used for continuing the travel process. *See, e.g.*, *Jennifer A. Miller*, CBCA 3240-TRAV, 13 BCA ¶ 35,360, at 173,537; *Orlando Sutton*, CBCA 2823-TRAV, 12-2 BCA at 172,447; *Issy Cheskes*, CBCA 689-TRAV, 07-2 BCA ¶ 33,624, at 166,536. Although Mr. Kinney argues that we should give FAMs the same travel reimbursement rights as employees subject to the FTR, the language of OLE 3401 precludes us from doing so. The drafting history of OLE 3410 makes clear FAMS' broad intent to bar all office-to-residence travel reimbursement, making us unable to support Mr. Kinney's request for a narrow exception for "stops" outside (rather than "to") the CFO. Because, following the OFACFO's waiver approval, the policy that FAMS set forth in paragraph 8.D is authorized, Mr. Kinney has no basis for recovering any of his requested expenses for trips commencing on or after February 1, 2017.

Interest on Mr. Kinney's Claim

Mr. Kinney asserts entitlement to interest because of TSA's delay in paying his claims. "It is well settled that," under the doctrine of sovereign immunity, "the United States cannot be charged with interest, except where liability therefor is clearly imposed by statute or assumed by contract." *New York Guardian Mortgagee Corp. v. United States*, 916 F.2d 1558, 1560 (Fed. Cir. 1990). This bar against the recovery of interest from the Federal Government includes interest for delays in payments of travel and relocation claims, unless the Government has expressly waived its sovereign immunity from an award of interest.

Nicholas J. Thacker, CBCA 4981-RELO, 16-1 BCA ¶ 36,231, at 176,765 (citing *Library of Congress v. Shaw*, 478 U.S. 310, 311 (1986)); *Synita Revels*, GSBCA 14935-RELO, 00-1 BCA ¶ 30,716, at 151,709-11 (1999), *reconsideration denied*, 00-1 BCA ¶ 30,896.

To support his request for interest, Mr. Kinney cites to FTR 301-52.19 and 301.52-20, which, as the Board has explained in the past, entitle an employee seeking travel reimbursement "to a late payment fee based on the [interest rate applicable under the Prompt Payment Act (PPA), 31 U.S.C. §§ 3901-3906 (2012),] beginning on the thirty-first day after submission of a proper travel claim and ending on the date payment is made." *Jennifer A. Miller*, 13 BCA at 173,538. Those FTR provisions were promulgated in response to the Travel and Transportation Reform Act of 1998, through which Congress, in an amendment to chapter 57 of title 5 of the United States Code, directed the Administrator of General Services to prescribe regulations that would require agencies to "reimburse[] an employee who submits a proper voucher for allowable travel expenses in accordance with applicable travel regulations within 30 days after submission of the voucher" and would obligate agencies to pay "a late payment fee as prescribed by the Administrator" for failure to comply with the thirty-day deadline. Pub. L. No. 105-264, § 2(g), 112 Stat. 2350, 2352 (1998) (codified at 5 U.S.C. § 5701 Historical and Statutory Notes (2012)); *see Nicholas J. Thacker*, 16-1 BCA at 176,765-66 (discussing history of FTR 301-52.17 through -52.20).

The cited statutory and regulatory provisions do not provide Mr. Kinney with any right to interest. As previously discussed, Congress exempted the FAA and TSA from the requirements of chapter 57 of title 5, *see* 49 U.S.C. §§ 114(n), 40122(g)(2), and the FTR is inapplicable to TSA travel claims. *Andrew J. Kohl*, 07-1 BCA at 165,788. Although the FAA and TSA can voluntarily elect to adopt particular FTR provisions or policies, *see* 49 U.S.C. § 106(l)(3), we cannot find any provision in the FAATP or in TSA's own policies creating an agency obligation to provide interest on delayed travel claim payments.

Mr. Kinney has not identified any other sovereign immunity waiver applicable to the payment of interest in the circumstances here. To the extent that his briefing references the PPA interest rate, the PPA does not in and of itself apply to travel claims. *Synita Revels*, 00-1 BCA at 151,709 & n.2; *see David W. Eubank*, B-219526 (May 25, 1988) (PPA applies to acquisitions from "business concerns," not claims by federal employees).[8] Mr. Kinney's interest request is denied.

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[8] Even if the PPA applied to travel claims, interest under the PPA does not begin to run when the agency disputes entitlement to the amounts sought. *Laurelwood Homes LLC v. United States*, 78 Fed. Cl. 290, 292-93 (2007).

Decision

We remand this matter to the agency for further consideration, as follows:

(1) For the eleven international TDY trips taken from July to September 2016, Mr. Kinney will be entitled to reimbursement of his day-of-travel round-trip travel expenses between his residence and the CFO only if he can show that, because of his international TDY travel, his commuting costs exceeded what they normally would have been; and

(2) For the ten international TDY trips taken from October 2016 to January 2017, Mr. Kinney is entitled to day-of-return mileage expenses from the CFO to his residence, plus reimbursement of tolls if he can substantiate their incurrence and amount.

The agency shall consider those issues and calculate Mr. Kinney's entitlement. Otherwise, Mr. Kinney's claim is denied.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge