UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 24, 2018

CBCA 6028-TRAV

In the Matter of SHAMIKA S. RICE

Shamika S. Rice, Millington, TN, Claimant.

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

O'ROURKE, Board Judge.

Claimant, Shamika S. Rice, a civilian employee with the United States Army Corps of Engineers (USACE), requests reimbursement of approximately $890 in per diem allowance related to a sixty-day temporary duty (TDY) in Puerto Rico. Because the agency improperly reduced claimant's per diem after completion of the TDY, we grant the request.

Background

Claimant deployed to San Juan, Puerto Rico, in support of hurricane relief efforts from October 13 through December 11, 2017. While deployed, she stayed at a hotel in the city. Halfway through the deployment, the hotel began charging lodgers certain fees, including a twenty-dollar-a-day meal plan fee and an eighteen percent resort fee. This change applied to new reservations and existing reservations. Claimant objected to paying these fees since she often worked long shifts and did not have the opportunity to utilize the hotel benefits covered by the fees. Despite her objections, the hotel made the fees mandatory, regardless of whether a guest utilized the services.

Claimant contacted her agency about the fees and began looking for alternative lodging accommodations to avoid them. The agency representative directed her to remain in the hotel since demand for lodging was high in the aftermath of Hurricanes Irma and

Maria, and since her lodging expenses did not exceed the maximum per diem allowance for the area, even with the additional fees.

After returning to the continental United States, claimant filed a travel voucher with the USACE Finance Center. The agency paid her hotel bill in full (including the mandatory fees), then reduced her per diem allowance to the proportional meal rate (PMR) to account for the hotel-mandated meal fee. As a result, claimant did not receive full per diem for the entire second half of her TDY. She contacted the Finance Center and inquired about the deduction, which amounted to approximately $890. The representative reviewed the request and affirmed the deduction, stating that "whenever there is a meal fee or registration fee which covers meals, the meals are deducted regardless of whether the traveler was available to eat those meals." Claimant sought the Board's review of the agency's decision.

Discussion

The Federal Travel Regulation (FTR) defines per diem as "a daily payment . . . for lodging (excluding taxes), meals, and related incidental expenses." 41 CFR 300-3.1 (2017). Whether claimant should have received full rate per diem rather than a reduced rate depends on: 1) what was authorized on claimant's travel orders, and 2) whether the applicable statute, regulation, or other guidance permitted the agency to reduce her per diem after the fact.

The estimated per diem cost reflected in claimant's travel orders was $9307.50. From the estimate alone, however, we cannot definitively state that claimant was authorized full per diem (also referred to as locality per diem), especially in light of the general remarks in section sixteen of her orders, which stated: "As of 1 Nov 14, a flat rate per diem allowance is authorized for TDY travel of 31-180 days at 75% of the locality per diem . . . flat rate applies to orders amended to extend [TDY] past 30 days." On its face, this remark seemed to provide the agency with all of the authorization it needed to reduce claimant's per diem during the voucher settlement process. Table 2-21 of that same section, however, rendered the rule inapplicable to a presidentially declared disaster area, which Puerto Rico was at the time. Since these remarks are not dispositive of the issue, we look to other evidence in the record to determine whether claimant was entitled to reimbursement of per diem at the full or reduced rate. Based on statements by the agency and claimant, as well as amounts listed in the settlement voucher, we find that claimant's orders authorized full per diem for the time period in question.

We next examine whether it was permissible for the agency to reduce that authorization after the fact. In justifying its reduction of claimant's per diem, the agency provided a two-sentence analysis: "The Joint Travel Regulation[s] [JTR] state that if meals are provided (i.e. breakfast, lunch or dinner), the M&IE [Meals & Incidental Expenses]

allowance must be reduced to the PMR. This is further provided in the FEMA [Federal Emergency Management Agency] Bulletin #174 (encl)." Though the agency did not cite the JTR provision it relied on, FEMA (the agency coordinating hurricane relief efforts in the area) issued a bulletin directing employees to use the M&IE rates established by the Department of Defense. For example, it stated: "[A] traveler deployed to San Juan who has no meals provided, may claim $70 for meals and $18 for incidental expenses for a total of $88 . . . [;] a traveler deployed to San Juan who has one or two meals provided will use the PMR when calculating M&IE, $42 for meals and $18 for incidental expenses for a total of $60." While this seems straightforward, the bulletin provided no information on the meaning of the phrase "meals provided." We look to the FTR and JTR for guidance.

The FTR states that meals provided by a common carrier (such as an airplane) or by a hotel (as a complimentary benefit) do not affect a traveler's per diem rate. 41 CFR 301-11.17. The FTR also addresses meals provided by the Government as part of a registration fee. In those cases, the FTR requires a reduction of the applicable M&IE rate to account for the meals provided. *Id*. 301-11.18. In this case, however, the meals were not Government-provided. *See Steven Rhude*, CBCA 749-TRAV, 07-2 BCA ¶ 33,682, at 166,753 (breakfasts and dinners on post, in the "chow hall," and meals ready to eat (MREs) for lunch deemed Government-provided). The meals were provided by the hotel and were not complimentary. The FTR does not address any other deductions for meals. Thus, under the FTR, claimant's per diem would not have been reduced. Claimant, however, is a DoD civilian employee, and as such is also subject to the JTR, which contains a much more complex framework for the M&IE portion of the per diem allowance than the FTR. As long as that framework does not conflict with the FTR, its provisions are enforceable. *Michael P. Strand*, CBCA 5776-TRAV, 18-1 BCA ¶ 36,993, at 180,160 (citing *Ronald D. Aylor*, CBCA 4752-TRAV, 15-1 BCA ¶ 36,028, at 175,984).

A number of provisions in the JTR are directly on point in this case, including when to apply the PMR, the permissibility of post-travel reductions in meal rates, the deductibility of a meal, exceptions to when a meal must be deducted, and when a travel order can be retroactively amended. A review of those provisions, however, revealed that the agency either misapplied the PMR, or the JTR definition of the PMR is inadequate. Table 2-17 of the JTR states that "[the PMR] applies when either [*sic*] of the following occur:

- A service member is lodged in adequate Government quarters on a U.S. installation and one or two meals are available and directed in a Government dining facility on that installation. PMR for available meals must be directed in the travel authorization.

- One or two deductible meals are provided at Government expense and at no cost to the traveler (for example, as part of a registration fee or conference fee) and the individual is not traveling.
- The PMR is computed by averaging the standard GMR and the meals portion of the applicable locality M&IE rate rounded up to the nearest dollar. Only the meal rate is used for the computation. The appropriate incidental expense rate is added to the PMR to create the proportional M&IE rate.
- The PMR does not apply when the traveler is traveling.

None of these situations applies to claimant's travel, yet the agency used the PMR to calculate claimant's reimbursement. Although the FEMA bulletin directed agencies to use the PMR when one or two meals are provided to the traveler, the bulletin is inconsistent with the JTR.

Other relevant provisions in the JTR are in conflict with one another. For example, one provision states, "After travel is completed, meal rates can be reduced only if the traveler received a deductible meal (see Table 2-18)." JTR 020304-A. Another provision states that an authorizing official (AO) should only request reduced per diem "when a per diem rate is more than the amount necessary, based on known lodging or meal-cost reductions in effect due to prearrangements, special discounts, or other reasons." It further states that "the AO must request and authorize reduced per diem *before* travel." JTR 020308 (emphasis added). In this case, the meal fee was not known ahead of time. It was a sudden and unexpected change to prearranged lodging and meal rates, so the AO had no opportunity to decide if a reduced meal rate was appropriate in these circumstances.

It is possible to construe any post-travel reduction in meal rates as an exception to the rule that reduced per diem should be established prior to travel. As previously noted, the JTR permits such a reduction if the traveler received a deductible meal. Table 2-18 of the JTR defines what is considered a deductible meal and what is not. Two of the seven definitions relate to meals provided by a lodging establishment, which is the situation in claimant's case. One definition states that meals are deductible "when [they] are included in the lodging cost under an agreement between the Government and the lodging establishment," and the other "[when] a charge is added in the lodging cost." JTR 020304-B, tbl. 2-18. Here, there is no evidence of an agreement between the hotel and the agency, but a charge was added to the lodging cost by the hotel. Under the first definition, the meal is not deductible. Under the second one, it is. Notwithstanding that fact, there are exceptions to this rule. Under the heading "Deductible Meals Unable to Be Consumed," the JTR permits the AO to authorize or approve the locality meal rate if the traveler meets all of the following criteria:

> 1. Is unable to eat an otherwise deductible meal because of medical requirements or religious beliefs, in which case the AO may require substantiating documentation from the appropriate professional authority.
>
> 2. Attempted, but is unable to make, alternative meal arrangements for a substitute meal.
>
> 3. Is unable to eat an otherwise deductible meal due to medical restrictions, religious beliefs, or requirements of the mission.

JTR 020304-C. These provisions are disjointed and cannot be read to require that all three criteria be met. We note, however, that the plain language of the third criterion suggests that the AO can authorize the locality meal rate when a traveler is unable to eat an otherwise deductible meal due to the requirements of the mission. This is exactly the case here. A lodging establishment imposed a mandatory meal fee on claimant; the fee was added to the lodging bill; claimant was unable to consume the meal due to mission requirements; and the agency directed her to remain in the hotel anyway. The agency did not dispute these facts. As such, we find that the hotel-provided meals were not deductible under this exception.

Finally, Appendix I of the JTR articulates the policy for amending travel orders. It states that "[a] travel order may be changed or corrected (within certain limits) by issuing an amendment." As far as the timing of an amendment, the policy states that it can be issued *before or after completion of travel* in order to:

> 1) Recognize an essential aspect of travel not known in advance,
>
> 2) Change the period or place of TDY assignment,
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> 3) Include omitted pertinent information,
>
> 4) Change allowances for unperformed travel or duty, and/or
>
> 5) Correct erroneous information or clerical errors that do not affect reimbursement retroactively.

None of these conditions apply. The second paragraph of this provision addresses authorization, approval, and retroactive modification, and specifically states: "Except to correct/complete a travel order to show the original intent, a travel order must not be revoked/modified retroactively to create or deny an allowance." It then states, "see pars. 4205 and 4210 regarding the effect of deductible meals on per diem rates." This last

sentence upends the clear prohibition against retroactive modification of a travel order to deny an allowance.

These various sections of the JTR, when considered together, provide no clear path to evaluating the propriety of the agency's actions when processing claimant's travel voucher. The agency's two-sentence analysis assumes clarity where none can be found. For these reasons, we cannot support the agency's interpretation of the available regulations and guidance. While we acknowledge the policy that the Government should not have to pay twice for the same meal, neither should the traveler. In this case, the facts weigh against the agency's post-travel meal deductions. Claimant's travel orders authorized the locality meal rate, and she relied on that authorization, as well as the reassurances received by her agency after inquiring about the fees, in performing her duties. "As a general rule, once travel is authorized, the employee's right to reimbursement of travel costs vests as the travel is performed, and 'valid travel orders cannot be revoked or modified retroactively, after the travel is completed, to decrease rights that have already become fixed.'" *Douglas W. Morris*, CBCA 5574-TRAV, 17-1 BCA ¶ 36,664, at 178,542 (quoting *Renee Cobb*, CBCA 5020-TRAV, 16-1 BCA ¶ 36,240, at 176,819); *see also Ethelyn Hubbard*, CBCA 481-RELO, 07-2 BCA ¶ 33,609, at 166,441; *Thomas W. Schmidt*, GSBCA 14747-RELO, 99-2 BCA ¶ 30,430, at 150,391; *Dr. Sigmund Fritz*, 55 Comp. Gen. 1241, 1242 (1976). "The rule applies unless there was an error on the face of the orders or the orders were clearly in conflict with a law, regulation, or agency instruction." *Douglas W. Morris*, 17-1 BCA at 178,542 (citing *Jeffrey E. Koontz*, CBCA 3251-TRAV, 13 BCA ¶ 35,318, at 173,372). There is no evidence in the record to suggest that the authorization was erroneous. Nor did the authorization conflict with any law, regulation, or agency instruction. Although the agency justified its actions based on a provision of the JTR, for reasons already discussed, we are not persuaded that it applies here.

Decision

Claimant was entitled to the locality per diem rate as authorized in her travel orders. The agency shall calculate the proper rate of per diem less amounts received and reimburse claimant accordingly.

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge