



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 6, 2018

CBCA 5904-TRAV

In the Matter of RANCE A. SCARBOROUGH

Rance A. Scarborough, Marysville, WA, Claimant.

Risa Salsburg, Office of the Chief Financial Officer, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

SOMERS, Board Judge (Chair).

Claimant, Rance A. Scarborough, is a civilian employee of the Federal Emergency Management Agency (FEMA). He has requested that we review the agency's partial denial of reimbursement of costs incurred during temporary duty (TDY) travel. We grant Mr. Scarborough's claim.

Background

FEMA deployed Mr. Scarborough from his permanent duty station (PDS) in Bothell, Washington, to Texas. On September 26, 2017, FEMA redeployed him from Texas to Puerto Rico to support FEMA's response to Hurricane Maria. When his TDY ended on October 10, 2017, Mr. Scarborough arrived at the airport at 11:51 a.m. for his flight scheduled to leave two hours later. After some delays in route, Mr. Scarborough arrived in Seattle, Washington, at 11:59 p.m. that same day. Mr. Scarborough first stopped by his office and then traveled home, arriving at his residence at approximately 2:00 a.m. on October 11, 2017. He did not pay for any meals or incur any incidental expenses between the airport and his office.

Mr. Scarborough submitted his travel voucher. The maximum allocable meals and incidental expenses (M&IE) rate for San Juan during the period of Mr. Scarborough's TDY was \$88 per day. Revised Non-Foreign Overseas per Diem Rates, 82 Fed. Reg. 35,516 (July 31, 2017). FEMA approved payment of \$66, or 75% of the maximum allowable M&IE for his travel on October 10, 2017, and denied his claim for M&IE for travel on October 11, 2017. Mr. Scarborough disputes the agency's calculation of M&IE expense.

Discussion

Federal employees traveling on official business are entitled to collect per diem for expenses incurred on official travel. 5 U.S.C. § 5702(a)(1) (2012). Section 301-11.101(a) of the Federal Travel Regulation (FTR) provides, in its question and answer format:

What allowance will I be paid for M&IE?

(a) . . . [Y]our allowance is as shown in the following table:

| When travel is | | Your allowance is |
|---|------------------------|---|
| More than 12 hours but less than 24 hours | | 75 percent of the applicable M&IE rate for each calendar day you are in a travel status. |
| 24 hours or more, on | The day of departure | 75 percent of the applicable M&IE rate |
| | Full days of travel | 100 percent of the applicable M&IE rate |
| | The last day of travel | 75 percent of the applicable M&IE rate |

41 CFR 301-11.101(a) (2017) (emphasis added). Thus, for official TDY travel that lasts more than more than 24 hours, the traveler shall receive "75 percent of the applicable M&IE rate" on the first and last calendar day of travel, and 100% for full days of travel.

The record is silent as to when claimant initially deployed to Texas. However, claimant's TDY travel started that date, and, for the day of departure, he would be entitled to 75% of M&IE. The record does establish, however, that Mr. Scarborough was on travel status from some point prior to September 26, 2017, through October 11, 2017, which is twenty-four hours or more. Therefore, under the regulations, claimant is entitled to 100 %

of the applicable M&IE, including October 10, until his last day of travel, October 11, 2017. For October 11, 2017, claimant is entitled to 75% of the applicable M&IE rate.

In calculating Mr. Scarborough's applicable M&IE rate, FEMA paid 75% of the applicable M&IE rate for October 10, 2017, and nothing for claimant's travel on October 11, 2017. FEMA notes that under 41 CFR 301-11.1, a traveler is only eligible for per diem when (1) the traveler performs official travel away from the official station, (2) the traveler incurs per diem expenses while performing official travel, and (3) the traveler is in a travel status for more than twelve hours. FEMA explains that it did not pay Mr. Scarborough for October 11 because he did not incur per diem expenses on that day.

We disagree. When a traveler is entitled to per diem, the traveler need not produce evidence that money was actually spent because the per diem allowance for temporary duty is set at a lump sum. *See Jeremy L. Parr, et al.*, CBCA 4641-TRAV, 15-1 BCA ¶ 36,129, at 176,353 ("there is no requirement for receipts to justify the amount actually spent because the per diem allowance for temporary duty is set at a lump sum" (citing *Steven L. Meints*, CBCA 2921-TRAV, 13 BCA ¶ 35,249)); *Heather M. Morgan*, CBCA 3982-TRAV, 15-1 BCA ¶ 35,945 ("the meals and incidentals allowance is a lump sum that the employee is not required to account for"). The mere fact that claimant may not have actually incurred any expenses does not preclude his entitlement to the lump sum amount authorized by his travel orders.

Next, FEMA argues that FEMA Manual 122-1-1, *Travel Policy Manual* (September 23, 2015), which provides that "[a] traveler may not claim per diem within 50 miles of his/her Permanent Duty Station (PDS) or Residence of Record (ROR)," limits claimant's entitlement to M&IE because he landed at the Seattle airport at 11:59 p.m., meaning that he was within fifty miles of his PDS during the entirety of his travel on his last day of travel. We find FEMA's position inconsistent with the FTR. As we noted, the FTR limits the traveler's entitlement to these expenses to "75 percent of the applicable M&IE rate" for the last day of travel, terminating when the traveler arrives at his or her office or residence following a return flight. 41 CFR 301-11.9. It says nothing about limiting M&IE when the traveler ends travel at a location within fifty miles of the PDS. Where the agency rule conflicts with the FTR, we apply the FTR. *See, e.g., Michael P. Strand*, CBCA 5776-TRAV, slip op. at 4 (Feb. 22, 2018).

Claimant's travel did not end until October 11, 2017. He landed at the airport on October 10, 2017, at 11:59, but did not complete his travel until he reached his office. As a result, claimant is entitled to "75 percent of the applicable M&IE rate" for the last calendar day of his travel.

Decision

We find that claimant is entitled to 100% of the applicable M&IE rate for travel on October 10, 2017. The agency paid claimant 75% of his M&IE entitlement for October 10, 2017, or \$66. Claimant should have received 100%, or \$88. The agency owes claimant an additional \$22 for October 10. In addition, claimant is entitled to 75% of his M&IE for October 11, his final day of travel. We find that claimant is entitled to an additional \$66 for October 11.

In sum, the agency owes claimant a total of \$88 for M&IE, which represents the remaining 25% for October 10 and 75% for October 11.

JERI KAYLENE SOMERS
Board Judge