



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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June 4, 2018

CBCA 5649-TRAV

In the Matter of JOSEPH D. BONICE

Joseph D. Bonice, APO Area Europe, Claimant.

Connie J. Rabel, Director, Travel Functional Area, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

**ZISCHKAU**, Board Judge.

The claimant, Joseph D. Bonice, seeks our review of the agency's disallowance of dependent transportation costs incurred during emergency visitation travel (EVT) following the death of his father on October 29, 2016. Mr. Bonice received transportation authorization approval from his authorizing official (AO) which was processed in the Defense Travel System (DTS) for himself, his wife, and child. Mr. Bonice then booked airline tickets for himself and his family through the prescribed agency travel office and the family began travel. Subsequently, the Defense Finance and Accounting Service (DFAS) travel office determined that the dependent travel authorization was improper and revoked the authorization after their travel had begun. DFAS notes that under the Joint Travel Regulations (JTR), chapter 7 (Special Circumstances Travel and Transportation), paragraph 7020 (Emergency Visitation Travel), the regulations generally allow transportation for only one person in most situations. We conclude that the JTR provides the AO discretion to approve additional family members in exceptional circumstances to go on EVT and that here the record is not clear on whether the AO exercised such discretion in approving Mr. Bonice's two dependents for EVT. We remand to the agency AO to determine if circumstances merited authorization for dependent travel.

Background

Mr. Bonice is a civilian employee of the Department of the Army stationed at the 7<sup>th</sup> Army Training Command, located in Germany. Citations to the JTR throughout this decision refer to the November 1, 2016, edition of the JTR, which is the applicable version based on

the November 2016 departure date on which Mr. Bonice and his family began their EVT travel. In his travel orders, Mr. Bonice was authorized travel pursuant to JTR 7020. JTR 7020 provides in relevant part:

B. General

1. Purpose. EVT allows an eligible employee assigned at/family member (of an employee) accompanying the employee at a foreign PDS to travel at Gov't expense to the CONUS, non-foreign OCONUS area, or another location in certain family emergency situations.

2. Allowance Discretion. EVT is not a discretionary allowance, except that **the AO must confirm the need for EVT and has discretion with regard to authorizing/approving an additional trip and transportation for an additional family member(s).**

....

5. Authority. EVT is authorized in the following circumstances:

....

b. Death. A member of the employee's or the employee's spouse's or domestic partner's immediate family has died . . . .

....

E. Limit on Number of Travelers

1. General. **Ordinarily, the employee or one eligible family member (not both) is authorized travel at Gov't expense. In exceptional circumstances, the AO may authorize/approve the travel of additional family members.**

2. Exceptions. Additional family members must travel due to:

a. A critical injury to a dependent child attending school away from the PDS.

- b. The death of the employee or an immediate family member at the PDS and the remains are being returned for interment in CONUS or in a non-foreign OCONUS area.
- c. A nursing child needs to accompany the mother, or
- d. Preschool children to accompany a single parent.

As stated above in paragraph B.2, EVT is not a discretionary allowance, except that the AO “has discretion with regard to authorizing/approving an additional trip and transportation for an additional family member(s).” That discretionary authority is repeated again in paragraph E.1 when it provides that the AO may authorize the travel of “additional family members” in exceptional circumstances. DFAS agrees that the AO has discretion to authorize EVT for additional family members in exceptional circumstances but interprets the mandatory exceptions of paragraph E.2 as specifying the *only* circumstances in which the AO may authorize travel of additional family members.

Paragraph C of JTR 7020 provides a listing of the legal authority for the JTR’s EVT, namely 10 U.S.C. § 1599b (2012) and 22 U.S.C. § 4081, and notes that “allowances must be similar to EVT allowances in 3 FAM 3740 of the State Department regulations.” Title 10 at section 1599b of the U.S. Code provides:

(a) In General.— The Secretary of Defense may provide civilian employees, and members of their families, abroad with benefits that are comparable to certain benefits that are provided by the Secretary of State to members of the Foreign Service and their families abroad as described in subsections (b) and (c). The Secretary may designate the employees and members of families who are eligible to receive the benefits.

(b) Travel and Related Expenses.— The Secretary of Defense may pay travel expenses and related expenses for purposes and in amounts that are comparable to the purposes for which, and the amounts in which, travel and related expenses are paid by the Secretary of State under section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081).

Title 22 at section 4081 provides in relevant part:

The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for—

- (1) proceeding to and returning from assigned posts of duty;
- (2) authorized or required home leave;
- (3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty;

....

The cited State Department Foreign Affairs Manual (FAM), at 3 FAM 3740, consists of sections 3741 through 3749. In the general provisions, 3 FAM 3744.a(2) states that when a member of the employee's immediate family has died, the post approves and funds death EVT. Section 3744.d states, with regard to the number of travelers permitted: "Ordinarily, only one member of a family (the person directly related to the ill, dying, or deceased individual) may travel at U.S. Government expense." Four exceptions are listed for cases where an employee or eligible family member resident at post dies, a nursing child or pre-school children are involved, the family includes children who require exceptional medical attention, and unaccompanied post EVT. These exceptions are similar, but not identical, to the exceptions found in JTR 7020-E.2. In *Brian D. Zbydniowski*, CBCA 4951-TRAV, 16-1 BCA ¶ 36,223, EVT authorization for a spouse of the claimant was revoked because exceptional circumstances cited in JTR 7020-E.2 and 3 FAM 3744.d. did not apply.

The provisions in JTR 7020 for EVT in the case of the death of a family member are similar to the provisions in 3 FAM 3740. The AO has the discretionary authority under JTR 7020-E.1 to approve death EVT travel for additional family members in exceptional circumstances, the mandatory exceptions in JTR 7020-E.2 and 3 FAM 3744.d and other similar exceptional circumstances. In this case, the record shows that EVT for the claimant, his wife, and child were the subject of multiple reviews and approvals culminating in the AO's approval. However, there is no narrative associated with the reviews and approvals in the documents submitted into the record so we are unable to determine if the AO based his approval on a consideration of facts that merited finding exceptional circumstances.

On remand, the agency AO should review the circumstances and document whether there are exceptional circumstances for his wife and son. If such exist, then the claimant should be reimbursed for the travel of one or both of his dependents. If exceptional circumstances do not exist, then claimant cannot receive reimbursement for the dependent travel.

The claim is remanded for further review and action by the agency.

*Jonathan D. Zischkau*  
JONATHAN D. ZISCHKAU  
Board Judge