



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 17, 2019

CBCA 6481-TRAV

In the Matter of BRYON L. CRAIG

Bryon L. Craig, Port Orchard, WA, Claimant.

Brock A. Logan, Supervisory Human Resources Specialist, BUMED HRO–Bremerton, Department of the Navy, Bremerton, WA, appearing for Department of the Navy.

CHADWICK, Board Judge.

The Department of the Navy authorized Bryon L. Craig to travel from his home outside Seattle, Washington, to a conference in San Diego, California, departing Sunday, December 2, 2018, and returning in the evening of Wednesday, December 5. Mr. Craig asked the Board to review the Navy’s May 2019 determination that he was overpaid \$71 in per diem because he arrived home from the airport at 12:45 a.m. on December 6, which the Navy’s payment system treated as another travel day for per diem purposes. Only entitlement to per diem for December 6 is in dispute, not the amount. We grant Mr. Craig’s claim.

Entitlement to per diem “starts on the day [the employee] depart[s his] home, office, or other authorized point and ends on the day [he] return[s] to [his] home, office or other authorized point.” 41 CFR 301-11.9 (2018). This entitlement arises from the employee’s actual travel experience. There is no bar to paying per diem “for periods of delay . . . where [1] the cause of delay is clearly beyond the control of the employee and [2] is not for his personal convenience and where [3] the circumstances of the situation reveal that the employee acted in a prudent manner.” *Hank Meshorer*, 68 Comp. Gen. 37, 39 (1988), *quoted in Renee Cobb*, CBCA 5020-TRAV, 16-1 BCA ¶ 36,240, at 176,822.

The Navy argues that the military departments' Joint Travel Regulations (JTR) "do[] not allow additional per diem if travel time exceeds what has been authorized," citing JTR 020302. To the contrary, the cited provision states, "When the Government purchases commercial air, train, or bus transportation, per diem is allowed for the actual time needed to travel over the direct route including necessary delays." JTR 020302-C. The Federal Travel Regulation would, in any event, supersede any inconsistent language of the JTR. *Ronald D. Aylor*, CBCA 4752-TRAV, 15-1 BCA ¶ 36,028, at 175,984.

Mr. Craig has the burden to establish entitlement. *E.g.*, *Renee Cobb*, 16-1 BCA at 176,819. The record shows that his authorized return flight was scheduled to depart at 7:40 p.m. and to arrive at the Seattle airport at 10:43 p.m. The departure was delayed until 8:10 p.m. We do not know if the arrival was equally late. Mr. Craig provided us online mapping data indicating that it can take an hour or more, depending on traffic, to drive from the airport to his home. Although we have no direct evidence of Mr. Craig's progress on his way home, we find perfectly plausible his statements to us that his flight arrived sometime after 11:00 p.m., then it took him about thirty minutes to retrieve his checked bag and his parked vehicle, and about another hour to drive home, until roughly 12:45 a.m. on December 6, as he claimed. The Navy argues that "[t]ravel delays solely for the traveler's own convenience" cannot justify additional per diem. That is true, but we see no reason to think that Mr. Craig delayed his arrival home either imprudently or for his own convenience.

The Navy's other arguments amount to questioning its own travel authorization after the fact. The Navy argues that Mr. Craig could have booked an earlier return flight before traveling and that he "has provided no justification for his claim that he was obligated" to attend the conference for a full day on December 5, noting that he "departed his hotel" at 4:30 p.m. These arguments ignore the fact that Mr. Craig took the exact itinerary that the Navy authorized in advance, with only a minor flight delay. He cannot be faulted for that now. *E.g.*, *Sheri L. Ellis-Smith*, CBCA 4022-RELO, 15-1 BCA ¶ 36,057, at 176,076 ("It is a longstanding principle that competent travel orders generally may not be modified to expand or reduce an employee's reimbursable expenses once travel has been performed.").

Decision

The claim is granted.

Kyle Chadwick
KYLE CHADWICK
Board Judge