



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 23, 2019

CBCA 6390-TRAV

In the Matter of GLENN R. GIBBONS

Glenn R. Gibbons, Quincy, MA, Claimant.

Mary Francis F. Comans, Chief Financial Officer, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

HYATT, Board Judge.

The Federal Emergency Management Agency (FEMA) authorized claimant, Glenn R. Gibbons, to travel from Boston, Massachusetts, to Honolulu, Hawaii, to provide medically necessary services for his mother, a FEMA employee who had sustained a serious injury while on temporary duty (TDY) in American Samoa. Mr. Gibbons has requested review of FEMA's determination that it was not authorized to cover lodging and per diem expenses.

Background

In April 2018, Mr. Gibbons received a letter from the office of FEMA's Regional IX administrator, authorizing his travel from Boston to Honolulu to assist his mother, who had sustained a serious injury while performing TDY in American Samoa, relating to the aftermath of Tropical Cyclone Gita. The letter stated that Mr. Gibbons would be reimbursed for lodging and meals and incidental expenses, as well as for transportation costs.

In reliance on the letter, Mr. Gibbons flew to Hawaii and stayed in a hotel, while his mother remained hospitalized. After she was discharged, Mr. Gibbons' mother recuperated for an additional five days in Hawaii until she was medically able to fly to Boston. While

Mr. Gibbons was in Hawaii, he was informed via a telephone call that the agency had incorrectly stated that he was eligible for reimbursement of lodging and subsistence expenses.

After he returned to Boston, Mr. Gibbons submitted a travel voucher requesting reimbursement of his transportation, hotel, and subsistence expenses. FEMA paid the transportation expenses, but did not reimburse Mr. Gibbons for lodging or meals and incidental expenses. Mr. Gibbons has asked the Board to review the disallowance of these costs.

Discussion

The statute applicable to Mr. Gibbons' claim provides that an employee who suffers an incapacitating illness while on TDY travel is entitled to be reimbursed for "expenses of transportation to the employee's designated post of duty, or home" and to be paid a per diem allowance or subsistence expenses until the employee reaches that location. 5 U.S.C. § 5702(b)(1)(A) (2012). The purpose of the statute is "to overcome in some measure inequities and hardships arising when an employee becomes ill or is injured while in a travel status and compelled to personally assume all expenses including subsistence and transportation costs." *Charles A. Smith*, GSBCA 14418-TRAV, 98-1 BCA ¶ 29,422, at 146,136 (quoting S. Rep. No. 81-1364, 1-2 (1950)).

The Federal Travel Regulation (FTR), which implements this statutory provision, further provides that when an employee has suffered an incapacitating injury or illness before completing a TDY assignment, the agency is authorized to pay

- (a) Transportation and per diem expenses for travel to an alternate location to receive medical treatment;
- (b) Transportation and per diem expenses to return to the official station;
and
- (c) Transportation costs of a medically necessary attendant.

41 CFR 301-70.503 (2018); *see id.* 301-30.4.

As the Board has previously recognized, under this regulation the agency's authority is limited to paying for transportation expenses incurred by a medically necessary attendant. Lodging, per diem, and incidental expenses are not reimbursable. *Meredith Myers*, CBCA 4991-TRAV, 16-1 BCA ¶ 36,207, 176,667-68 (2015); *Smith*, 98-1 BCA at 146,136-37.

Unfortunately, while the agency erroneously advised Mr. Gibbons that his lodging and subsistence expenses would be reimbursed, and Mr. Gibbons incurred expenses in reliance on this statement, the applicable statute and implementing FTR provisions do not allow an agency to pay for these expenses. It is well-settled that erroneous advice provided by government officials cannot enlarge a claimant's entitlements; only expenses that are authorized by statute and regulations may be reimbursed. *E.g.*, *Paul A. Monderer*, CBCA 6355-TRAV, 19-1 BCA ¶ 37,300; *Steven T. Basedon*, CBCA 5864-TRAV, 18-1 BCA ¶ 36,939.

Decision

The claim is denied.

Catherine B. Hyatt
CATHERINE B. HYATT
Board Judge