



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 6, 2019

CBCA 6394-TRAV

In the Matter of DENNIS B.

Dennis B., Claimant.

Pamela Arias-Ortega, Office of the General Counsel, National Nuclear Security Administration, Department of Energy, Albuquerque, NM, appearing for Department of Energy.

LESTER, Board Judge.

Claimant asserts that he did not receive reimbursement of travel expenses within the thirty-day payment window that section 301-52.17 of the Federal Travel Regulation (FTR) (41 CFR 301-52.17 (2018) (FTR 301-52.17)) mandates and that, as a result, he is entitled to a late payment fee under FTR 301-52.19 and -52.20. The agency denied his request for payment of the fee. For the reasons set forth below, we grant the claim.

Background

The Travel Authorization and Vouchering Process at Issue

Claimant is an employee of the National Nuclear Security Administration (NNSA) within the Department of Energy (DOE).

Paragraph DOE301-52.3 of the DOE Travel Manual provides that, “[i]n most instances, vouchers for both [temporary duty] and local travel must be submitted electronically.” Within NNSA, travel authorizations and vouchers are processed through Concur Government Edition (Concur), an electronic government travel program, and the

majority of employees personally input their own electronic travel authorization requests and travel vouchers into Concur. Because much of the work that individuals in the claimant's position perform involves travel, they have insufficient time at the office to input travel vouchers, and NNSA employs unit travel and payroll specialists (UTAPSs) to input their travel authorizations and post-travel vouchers into Concur for them.

If a particular trip is considered mission-related, the details of the pre-trip may be considered classified, meaning that the specific destination cannot be disclosed before the trip commences. For that reason, the details of the trip cannot be included in a travel authorization. To account for that, the agency has created a process by which, for mission-related trips, a UTAPS inputs into Concur what NNSA refers to as a "mock travel authorization" for each individual who will be traveling, without identifying the specific location of the impending travel.

Once the mission-related travel is complete, the specific locations to which the employee traveled are no longer considered classified. At that point, the employee documents his or her itemized travel expenses on Standard Form (SF) 1012 and submits the paper form to a supervisor for approval. After the supervisor signs as the "Approving Official" on SF 1012, the form is forwarded to a UTAPS, who is then supposed to take the information in the paper SF 1012, input it into Concur to support both an actual travel authorization (which, once approved, replaces the mock travel authorization) and a travel voucher for the employee's travel expense reimbursement, and submit them for approval and payment through the electronic system. Claimant notes that, under his agency's policy, he is not personally allowed to submit his own travel voucher electronically, but is required to rely upon the UTAPSs to do that.

The Temporary Suspension of the Agency's Voucher Process

The end of the agency's Fiscal Year (FY) 2018 was September 30, 2018. On August 30, 2018, in anticipation of that deadline, agency budget personnel issued FY 2018 end-of-year travel guidance to employees indicating that "September 19, 2018, is the cut-off date for submitting and approving vouchers to ensure payment before the end of the fiscal year" and that vouchers for any travel ending on or before that date would have to be submitted through Concur and approved by the close of business that day. The guidance further provided that vouchers submitted after September 19, 2018, "will be processed and paid [with FY 2019 funds] as soon as the system opens and funding is available."

NNSA has represented, through a declaration from an agency financial specialist, that, because of fiscal year-end processing, no authorizations or vouchers from claimant's office were to be processed after September 19, 2018, until agency budget personnel gave the "go

ahead.” The reason for this “hold” on authorizations and voucher processing, NNSA represents, was to allow the budget office to transition from FY 2018 to FY 2019 funding, reconcile FY 2018 obligations, and ensure the use of appropriate accounting codes for FY 2019 travel authorizations and payments. Because of that budget office guidance, UTAPSs were precluded from inputting any electronic travel authorizations or vouchers after the close of business on September 19, 2018, pending notification from NNSA financial specialists and travel support personnel that the system was open again. On October 11, 2018, NNSA notified employees that, because it had not yet received FY 2019 funding, the pause on inputting travel authorizations and vouchers would have to continue. It was not until October 17, 2018, that the agency received notification that FY 2019 funding was available.

Claimant’s September 2018 Trip

At the direction of his agency chain of command, claimant performed official travel from September 17 through 21, 2018, pursuant to the type of “mock travel authorization” that his agency, as a matter of policy, utilizes for employees on mission-related travel. Immediately after returning to his office on September 21, 2018, he completed a SF 1012 travel voucher in paper form and provided it to his first-line supervisor, who signed his approval of the voucher in the form’s “Approving Official” signature box on September 26, 2018.

In accordance with the agency’s August 30, 2018, end-of-year travel guidance and verbal instructions to local agency management regarding the pause on travel processing, no further action was taken on claimant’s travel expense reimbursement request until after the agency’s budget office announced on October 17, 2018, that FY 2019 funding was available and that travel processing through Concur could resume. A UTAPS entered claimant’s actual travel authorization (to replace his previously approved mock travel authorization) into Concur on October 18, 2018; FY 2019 funds were obligated on October 22, 2018; the UTAPS entered claimant’s travel voucher into Concur on October 24, 2018; the voucher was approved within the Concur system on October 25, 2018; and claimant received reimbursement of his travel expenses on October 29, 2018. At no time has claimant been notified of any errors or deficiencies in his original travel voucher that delayed payment.

On November 19, 2018, claimant requested that NNSA provide him with a late payment fee pursuant to FTR 301-52.19 in light of the agency’s failure to reimburse his travel costs within thirty days of his submission of his travel voucher. NNSA denied his request on February 12, 2019, asserting that the agency’s reimbursement was timely because his travel voucher was paid within a few days after it was entered into Concur on October 24, 2018. Claimant subsequently requested that the Board review his claim.

Discussion

Once an employee “submit[s] a proper travel claim to [the] agency’s designated approving office,” the employing agency has up to thirty calendar days within which to reimburse the employee. FTR 301-52.17. If the agency fails to make payment within that thirty-day period, FTR 301-52.19 and -52.20 require the agency to add a late payment fee to the reimbursement, calculated “based on the [interest rate applicable under the Prompt Payment Act (PPA), 31 U.S.C. §§ 3901-3906 (2012),] beginning on the thirty-first day after submission of a proper travel claim and ending on the date payment is made,” *William V. Kinney*, CBCA 5861-TRAV, 18-1 BCA ¶ 37,184, at 180,995 (quoting *Jennifer A. Miller*, CBCA 3240-TRAV, 13 BCA ¶ 35,360, at 173,538 (citing FTR 301-52.20(a)), or paid as “a flat fee of not less than the prompt payment amount, based on an agencywide average of travel claim payments.” FTR 301-52.20(b). The agency must also pay the employee “an amount equivalent to any late payment charge that the card contractor would have been able to charge [the employee] had [he or she] not paid the bill.” FTR 301-52.20(c); *see Patrick M. Cotton*, CBCA 6071-TRAV, 18-1 BCA ¶ 37,047, at 180,337-38 (discussing FTR 301-52.20(c)).

In this case, we have to decide when claimant submitted a “proper travel claim” for purposes of the late payment fee provision. The FTR defines a “[t]ravel claim (voucher)” as “[a] written request, supported by documentation and receipts where applicable, for reimbursement of expenses incurred in the performance of official travel.” FTR 300-3.1. Except for an additional requirement that the traveler attach to a travel claim copies of travel authorizations, lodging expense receipts, and receipts for other expenses in excess of \$75, FTR 301-52.7, the FTR’s drafters saw no “need to restrict agencies by establishing Governmentwide standards” regarding the travel claim submission process and elected to provide agencies with discretion in deciding what constitutes a “proper travel claim” for purposes of starting the thirty-day payment clock. 65 Fed. Reg. 3054, 3054 (Jan. 19, 2000). Accordingly, the FTR directs that, in submitting a “proper travel claim,” an employee is to act “in accordance with administrative procedures prescribed by [his or her] agency.” FTR 301-52.6; *see* 65 Fed. Reg. at 3054 (“[A] ‘proper voucher’ [is] a travel claim that meets an agency’s guidelines for what they have determined to be a ‘proper voucher.’”).

The agency has established a process by which employees in claimant’s position must prepare a travel claim in paper form on SF 1202, accompanied by receipts, and submit it to his or her supervisor for approval before the form is forwarded to a UTAPS for inputting into Concur. Claimant did just that, submitting his completed form to his supervisor on September 21, 2018, consistent with the agency’s regular administrative procedure. With that submission, the agency’s thirty-day window for paying the travel claim commenced.

NNSA argues that, despite its standard practice for travel voucher submissions from employees in claimant's position, the thirty-day late payment fee clock cannot commence until a UTAPS actually enters the employee's voucher into Concur. It cites to FTR 301-52.3, which provides that, "[a]s soon as [an] agency fully deploys the E-Gov Travel Service (ETS)," which agencies were required to do by September 30, 2006, employees "must use the ETS to file [their] travel claims," FTR 301-52.3, and it is the electronic submission, NNSA asserts, that commences the thirty-day payment obligation. The FTR provision that NNSA cites, though, presumes that the agency's ETS is available to the employee. *See* 68 Fed. Reg. 71,026, 71,027 (Dec. 22, 2003). That FTR provision directs that, until an agency's ETS is available, the employee should "file [any] travel claim in the format prescribed by [the] agency," whether that be by hard paper copy or by other means. FTR 301-52.3. Further, agencies can, when necessary, "grant individual case-by-case exceptions," as well as sub-component exceptions, "to the use of [ETS] in accordance with [FTR] 301-73.102 and 301-73.104" where ETS use is not practicable. 68 Fed. Reg. at 71,027; *see* FTR 301-73.102, -73.104.

We recognize that the FTR encourages agencies to have their employees use ETS systems. Nevertheless, the administrative process that the agency has created bars individuals in claimant's position from accessing the ETS and requires them to submit a paper SF 1012, an exception to the ETS process that the FTR contemplates. *See* FTR 301-71.207(b), -73.102. The FTR requires an employee like claimant to submit his travel claim "[w]ithin 5 working days after [he] complete[s] [his] trip or period of travel," FTR 301-52.7, and claimant followed the only process for travel voucher submission that was available to him. To the extent that the FTR made the use of ETS mandatory, it is the agency's, not the employee's, obligation to develop, deploy, and maintain the ETS, FTR 301-73.100, and the reason that claimant could not submit electronically was because the agency itself precluded ETS access for an extended period of time.

An agency cannot force employees to defer submitting travel vouchers while simultaneously requiring them to bear the financial burdens of Government travel to cover for the agency's own regulatory failures. The purpose of the late payment fee, which Congress created through the Travel and Transportation Reform Act of 1998, Pub. L. No. 105-264, 112 Stat. 2350, 2352 (1998) (codified at 5 U.S.C. § 5701 Historical and Statutory Notes (2012)), was "to provide some incentive for agencies to reimburse employees in a timely fashion and ensure that employees do not have to use their own money to pay the bill for the required travel charge card." S. Rep. No. 105-295, 1998 WL 538197, at *4 (Aug. 25, 1998). Agencies cannot evade paying interest under this type of statute by citing to "administrative problems such as [agency] failures to forward paperwork [and] outdated payment systems." *Inversa, S.A. v. United States*, 73 Fed. Cl. 245, 247-48 (2006) (discussing the analogous PPA). They similarly cannot manipulate voucher submission dates to delay

interest accrual deadlines by creating arbitrary submission obstacles or by deciding that the interest clock will commence only when a particular agency office receives the voucher while simultaneously directing another agency office to hold the voucher so as to delay its receipt by the other office. *See* H.R. Rep. No. 100-784, at 14 (1988) (discussion in the PPA legislative history about improper efforts of agencies to avoid accrual dates for PPA interest), *reprinted in* 1988 USCCAN 3036, 3042.

An agency must process and pay its employees' travel vouchers in a timely manner, and it must "pay[] an interest penalty [or late payment fee] when it does not." *Margaret A. Willis*, B-223827, et al. (Apr. 20, 1989) (discussing PPA). Here, claimant provided his voucher to his supervisor, consistent with his agency's standard practice, on September 21, 2018, and the agency cannot avoid interest accrual by electing to shut down access to its ETS.

Decision

We grant the claim. Claimant submitted a proper travel claim to his approving official on September 21, 2018, and the agency shall pay a late payment fee, calculated in accordance with FTR 301-52.20(a) and (b), in light of its failure to pay that claim within thirty days of that submission date. To the extent that claimant timely paid travel costs that fall within the scope of FTR 301-52.20(c), the agency shall also reimburse him under that FTR subsection.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge