



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 16, 2019

CBCA 6302-TRAV

In the Matter of BRANDON G. ZUMBANO

Lawrence A. Berger of Mahon & Berger, Esqs., Glen Cove, NY, appearing for Claimant.

Kasey Podzius, Associate Legal Advisor, Immigration and Customs Enforcement, Department of Homeland Security, Washington, DC, appearing for Department of Homeland Security.

RUSSELL, Board Judge.

Claimant, Brandon G. Zumbano, an employee of the Immigration and Customs Enforcement (ICE) of the Department of Homeland Security (DHS), seeks reimbursement of \$1329.85 for per diem expenses incurred while on official travel. For the reasons stated below, we deny Mr. Zumbano's claim for temporary duty (TDY) expenses and remand the claim to the agency to calculate Mr. Zumbano's allowance for local travel.

Background

In November 2017, Mr. Zumbano attended a three-day training program at Potomac Center North (PCN), which is ICE's headquarters building in Washington, D.C. In connection with the training, Mr. Zumbano stayed at a hotel in Alexandria, Virginia, from November 13 to 17. Mr. Zumbano's permanent duty station (PDS) is at ICE's Baltimore Field Office in Maryland.

Several weeks before Mr. Zumbano attended the training, the agency approved a travel authorization for Mr. Zumbano and funded his TDY travel. Under the authorization's information section, the travel was described as "from Baltimore, MD to Washington, DC

via Alexandria, VA and return.” The itinerary location was incorrectly listed as Alexandria, because the training actually took place in Washington. Of note, when traveling from Baltimore to Washington by car, Alexandria is actually further than Washington. Also, the hotel in Alexandria at which Mr. Zumbano stayed and the training location in Washington are both located within a fifty-mile driving distance from Mr. Zumbano’s PDS.

The week after the training program, Mr. Zumbano submitted a voucher for reimbursement of \$1329.85 for per diem expenses, including lodging, that he had charged to his government travel card. His voucher was denied the following day by the agency’s Financial Management Unit, because his temporary duty station was within fifty miles of his PDS.

Represented by counsel, Mr. Zumbano appealed the agency’s denial to the Board on October 31, 2018. Mr. Zumbano argued that he is entitled to reimbursement because the travel for the mandatory training was authorized in advance.¹ In his reply to the agency’s response, Mr. Zumbano averred that ICE impliedly waived the fifty-mile rule, since the DHS Travel Handbook (DHSTH) permits employees to request such a waiver “[u]nder certain situations . . . based upon [a] justification provided and the special circumstances surrounding the request.” DHSTH 7.2.

Discussion

Under the Federal Travel Regulation (FTR), a federal employee is eligible for an allowance (per diem or actual expense) when the employee performs official travel away from the official duty station, incurs per diem expenses while performing official travel, and is in a travel status for more than twelve hours. 41 CFR 301-11.1 (2018) (FTR 301-11.1). A per diem allowance is a daily payment for lodging, meals, and related incidental expenses, and is different from a reimbursement for actual expenses. FTR 300-3.1. Official travel is defined as “[t]ravel under an official travel authorization from an employee’s official station or other authorized point of departure to a temporary duty location.” *Id.* Generally, an employee’s official station is “[a]n area defined by the [employee’s] agency that includes the location where the employee regularly performs his or her duties The area may be a mileage radius around a particular point, a geographic boundary, or any other definite domain, provided no part of the area is more than 50 miles from where the employee

¹ In his original submission to the Board, Mr. Zumbano inexplicably claimed \$10,000 “plus any statutory/regulatory benefits that may have accrued including, but not limited to, interest.” In his reply to the agency’s response, he amended his claim to the amount originally sought in the voucher he submitted.

regularly performs his or her duties.” *Id.* This Board has held that an employee who attends training within fifty miles of his or her official duty station is not entitled to an allowance – per diem or actual expenses. *Donald C. Barnes*, CBCA 4089-TRAV, 15-1 BCA ¶ 35,985, at 175,811.

The ICE Travel Handbook (ICETH) similarly describes TDY travel and the fifty-mile rule:

TDY travel is defined as performing official travel away from the local commuting area of the employee’s permanent duty station (PDS) – the primary address at which the employee works. Any location within 50 miles or less of the employee’s PDS is considered to be within the local commuting area.

ICETH I.A.1.a. The handbook reiterates the fifty-mile rule again when describing local travel:

Employees may be required to conduct official business away from their permanent duty station (PDS) while still within close proximity (50 miles or less) to their primary worksite, which constitutes local travel. In these circumstances, employees are not eligible to receive the same reimbursement for travel related expenses as when conducting TDY travel (distance of more than 50 miles).

ICETH IV. Mr. Zumbano is an ICE employee. Therefore, under both the FTR and the ICETH, Mr. Zumbano is not eligible for reimbursement of TDY travel expenses, because his travel was within fifty miles of his permanent duty station in Baltimore.

The fact that Mr. Zumbano’s TDY travel was authorized in advance does not affect our analysis. “It is well established that the Government may not authorize the payment of money if not in accordance with statute and regulation.” *William T. Orders*, GSBCA 16095-RELO, 03-2 BCA ¶ 32,389, at 160,290 (citing *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380 (1947)); *see also Charles T. Oliver*, GSBCA 16346-RELO, 04-1 BCA ¶ 32,614, at 161,405 (“[A]bsent a specific provision in statute or regulation granting an exception under certain circumstances, neither an agency nor this Board has the authority to waive, modify, or depart from the Government’s official travel regulations for the benefit of any federal employee who is subject to them.”). Hence, any misinformation from an ICE employee that Mr. Zumbano detrimentally relied on cannot bind the agency when it conflicts with the FTR. *Ruben E. Miranda*, CBCA 6154-RELO, 18-1 BCA ¶ 37,153, at 180,859.

As for Mr. Zumbano's contention that the agency impliedly waived the fifty-mile rule, given how waiver is permissible under the DHSTH, we hold that Mr. Zumbano, as an ICE employee, is subject to the ICETH, which expressly states that ICE travel policies and procedures may be more restrictive than those provided in the DHSTH. Notably, the ICETH does not provide for the waiver of the fifty-mile rule described in the DHSTH.

Although ineligible for reimbursement of TDY travel expenses, Mr. Zumbano is eligible for reimbursement of his local travel expenses. The ICETH defines local travel as "travel occurring while an employee is engaged on official business within the local commuting area." ICETH IV.A.1. "The local commuting area is defined as the area within 50 miles of the employee's [PDS]." *Id.* When an employee is traveling locally, lodging expenses will not be reimbursed. *Id.* at IV.B.1. But, an employee may receive an allowance for meals and incidentals when he or she incurs such expenses while performing official duties and remains in travel status for more than twelve hours. *Id.* IV.B.2. An employee may be reimbursed for multiple travel days if he or she remains in travel status for more than twelve hours for each of those days. *Id.* Reimbursement is calculated as "75% of the per diem rate based on the locality where official business is taking place." *Id.* IV.B.3. "If an employee qualifies for [meals and incidental expenses] reimbursement . . . a travel authorization must be submitted through the travel system and approved by the employee's approving official in advance of the travel." *Id.* In the instant appeal, Mr. Zumbano was on local travel since the training location was within fifty miles of his home; he was performing official duties by attending the training program at PCN; and, he was in travel status during the days that he was attending the training. Therefore, Mr. Zumbano is eligible for reimbursement of seventy-five percent of the per diem rate for meals and incidental expenses in the locality of Washington, D.C.

The fact that the travel authorization was submitted for TDY travel, instead of local travel, does not nullify Mr. Zumbano's eligibility, because a claimant's travel orders can be amended retroactively. Under limited circumstances, travel orders may be amended when "(a) there is an error on the face of the orders, (b) the orders do not conform to applicable statutes and regulations, and (c) 'the facts and circumstances surrounding the issuance of an authorization clearly demonstrate that some provision which was previously determined and definitely intended to be included was omitted through error or inadvertence in preparing the authorization.'" *Peggy L. Clevenger*, CBCA 3854-RELO, 14-1 BCA ¶ 35,796, at 175,080 (quoting *Diane F. Stallings*, GSBCE 16793-RELO, 06-1 BCA ¶ 33,201). From the facts presented, it appears that it was ICE's intent to reimburse Mr. Zumbano for expenses he incurred during his training at PCN in Washington, D.C.

Decision

Mr. Zumbano's claim for TDY is denied. However, Mr. Zumbano is entitled to reimbursement of his local travel expenses while attending training. Specifically, Mr. Zumbano is entitled to seventy-five percent of the per diem rate for meals and incidental expenses in the locality of Washington, D.C. We remand the claim to the agency to calculate the correct amount of allowance.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge