



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 14, 2019

CBCA 6568-RELO

In the Matter of TERESA K. SCALISE

Teresa K. Scalise, Washington, DC, Claimant.

Jamie L. McCullough, Acting Managing Director, Financial Policy, Reporting and Analysis Directorate, Bureau of the Comptroller and Global Financial Services, Department of State, Washington, DC, appearing for Department of State.

RUSSELL, Board Judge.

Claimant, Teresa K. Scalise, an employee of the Department of State (DOS), seeks reimbursement of \$3270 in per diem expenses incurred while on an authorized house hunting trip (HHT). We must deny Ms. Scalise's claim because reimbursement of per diem for an HHT is at the standard, not the locality, rate.

Background

On April 24, 2019, Teresa Scalise received orders from DOS to transfer from Chicago, Illinois, to Washington, D.C. Her orders authorized an HHT of ten days to Washington, D.C., and \$3270 of per diem at the locality rate for the District of Columbia. After Ms. Scalise completed her HHT and submitted her travel voucher, DOS auditors determined that Ms. Scalise was only entitled to per diem at the standard continental United States (CONUS) rate. Applying the CONUS rate, DOS auditors calculated that Ms. Scalise was only entitled to \$1494.95 in per diem. DOS acknowledged its error in authorizing per diem at the locality rate, but nonetheless refused to reimburse Ms. Scalise for the full \$3270 of costs she had incurred. Ms. Scalise brought this claim to recover the total amount of the originally authorized \$3270.

Discussion

The Federal Travel Regulation (FTR) is “the regulation . . . which implements statutory requirements and Executive branch policies for travel by Federal civilian employees and others authorized to travel at Government expense.” 41 CFR 300-1.1 (2019). The FTR authorizes “[a] per diem allowance at the standard CONUS rate” for subsistence expenses incurred in the course of a house hunting trip. 41 CFR 302-5.13 tbl. (a). Unlike temporary duty per diem allowances, which may be adjusted for the cost of a locality in accordance with 41 CFR 301-11.6 tbl. (a), relocation per diem travel allowances are limited to the standard CONUS rate. *See* 41 CFR 302-4.200; *Debra K. Armstrong*, CBCA 3712-RELO, 14-1 CBCA ¶ 35,676, at 174,610. Accordingly, DOS was correct in finding that Ms. Scalise’s entitlement to per diem was limited to the CONUS rate.

We agree with both parties that DOS is at fault for issuing travel orders that incorrectly authorized per diem for Ms. Scalise at the locality rate. However, we cannot award Ms. Scalise the per diem she was erroneously authorized.

The Appropriations clause of the Constitution provides that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art. I, § 9, cl. 7. “[I]n other words, the payment of money from the Treasury must be authorized by a statute.” *Office of Personnel Management v. Richmond*, 496 U.S. 414, 424 (1990). “In longstanding case law, the Board has held that where relevant statutes and regulations do not provide for payment for a particular purpose, an agency may not make such a payment.” *Monika M. Derrien*, CBCA 5901-TRAV, 18-1 BCA ¶ 36,967, at 180,100. “Thus, [even] an agency employee’s erroneous advice cannot obligate the Government to make payment of monies that are not authorized by statute and regulation.” *Id.*; *see also Armstrong*, 14-1 BCA at 174,610-11. The Board cannot compel an agency to violate federal statute and a statute’s implementing regulations for the sake of equity even where, as here, Ms. Scalise relied on her agency’s guidance to her detriment.¹

¹ Underscoring this point, in *Office of Personnel Management v. Richmond*, the Supreme Court noted that “Congress has always reserved to itself the power to address [those] claims . . . founded not on any statutory authority, but upon the claim that ‘the equities and circumstances of a case create a moral obligation on the part of the Government to extend relief to an individual.’” 496 U.S. at 431 (citing Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary, Supplemental Rules of Procedure for Private Claims Bills, 101st Cong., 1st Sess. 2 (Comm. Print 1989)).

Decision

Ms. Scalise's claim for per diem in the amount of \$3270 is denied. Ms. Scalise is entitled to per diem for her HHT according to the standard CONUS rate.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge