



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 22, 2020

CBCA 6890-TRAV

In the Matter of SAMUEL C. PARSHALL

Samuel C. Parshall, Claimant.

Curtis C. Smith, Major, Judge Advocate, Office of the Staff Judge Advocate, Network Enterprise Technology Command, Department of the Army, Fort Huachuca, AZ, appearing for Department of the Army.

LESTER, Board Judge.

Claimant, Samuel C. Parshall, seeks to recover mileage expenses for the time period that he was temporarily required to commute from his residence to a permanent duty station (PDS) at Schofield Barracks rather than to what he considers his regular PDS at Fort Shafter. When Fort Shafter was closed for renovations, the Department of the Army (Army) notified Mr. Parshall, and all other employees of the Army's Regional Cyber Center–Pacific (RCCP) who had been working at Fort Shafter, that they would temporarily be reassigned to Schofield Barracks, where they worked for a nine-month period. Mr. Parshall argues that he was effectively on temporary duty for those nine months and is entitled to reimbursement for local temporary duty travel expenses. A temporary change in PDS is not necessarily the same as temporary duty. We deny his claim.

Background

Mr. Parshall was working for the RCCP at Fort Shafter when, by memorandum dated February 4, 2017, the RCCP's director, Lieutenant Colonel (Lt. Col.) Christopher M.

Siegrist, notified him and all other RCCP employees that, because of renovation work at Fort Shafter, their official duty station was being temporarily changed, as follows:

1. This memorandum is to inform you of a temporary change in your duty station from the Regional Cyber Center Pacific (RCC-P), Fort Shafter, Hawaii to BLDG 1500 Schofield Barracks effective February 18, 2017.
2. The RCC-P will undergo major renovations within the office and building. As a result, you will be temporarily reassigned to BLDG 1500 Schofield Barracks, where you will continue to perform the same essential job functions that you now perform. We anticipate the completion in 14 weeks and will provide you sufficient notice in returning to Fort Shafter.
3. If you have questions or concerns about this temporary relocation, please address them to [the designated Army representative] or by stopping by his office.

Agency Response Enclosure 1. The agency did not issue a Notification of Personnel Action on a Standard Form (SF) 50 officially changing the RCCP employees' PDS, but relied on the Siegrist memorandum to communicate the temporary transfer.

Following issuance of the Siegrist memorandum, Mr. Parshall, like other RCCP employees, worked at Schofield Barracks. Fort Shafter remained closed for renovations for more than eight months, and Mr. Parshall's change in duty station extended until November 1, 2017, at which point he returned to his original PDS at Fort Shafter. In January 2018, Mr. Parshall submitted a temporary duty (TDY) travel claim to the agency, asserting that his daily commute from his residence to Schofield Barracks was twenty miles longer than his Fort Shafter commute had been and that he was entitled to mileage expenses for the additional distance. The Army denied that claim.

On August 4, 2020, Mr. Parshall submitted his claim to the Board. The Army argues in response that, through Lt. Col. Siegrist's memorandum, Schofield Barracks became Mr. Parshall's PDS, albeit temporarily, and that an employee's costs of commuting from his residence to his PDS are not compensable. This matter is ready for decision.¹

¹ After the Army filed its response to Mr. Parshall's claim, Mr. Parshall filed what he titled "Claimant's Motion for Summary Judgment," referencing Rule 56 of the Federal Rules of Civil Procedure. Although the Board's rules provide for the submission of summary

Discussion

Mr. Parshall's TDY Claim

Mr. Parshall is not the first RCCP employee to bring a claim to the Board seeking TDY expenses for the 2017 transfer to Schofield Barracks. In *Kevin T. Aubart*, CBCA 5718-TRAV, 17-1 BCA ¶ 36,852, *reconsideration denied*, 17-1 BCA ¶ 36,854, the Board held that the RCCP's temporary move to Schofield Barracks while Fort Shafter was closed for renovations did not constitute TDY or place the employee subject to the PDS reassignment into TDY status, meaning that the employee was not entitled to TDY mileage expenses for the time spent commuting between his residence and Schofield Barracks:

Kevin T. Aubart is a civilian employee of the Department of the Army in Hawaii. Beginning in February 2017 and continuing at least until June 2017 (the date of the Army's last filing with us), the Army "temporar[il]y" changed his duty station from Fort Shafter to Schofield Barracks, which Mr. Aubart states is 17.5 miles farther from his home than Fort Shafter is. He seeks review of the Army's refusal to provide him a voucher to claim mileage expenses for commuting to and from Schofield Barracks by car. We deny the claim. Mr. Aubart relies on regulations for official travel to and from a temporary duty (TDY) location. *E.g.*, 41 CFR 301-10.1, -10.2 (2016). Schofield Barracks is Mr. Aubart's official duty station temporarily. He performs the same job there as he did at Fort Shafter. A TDY location is "[a] place, away from an employee's official station, where the employee is authorized to travel." *Id.* 300-3.1. Mr. Aubart is not on authorized, official travel while commuting. *Freddie G. Fenton*, GSBCA 13638-TRAV, 97-1 BCA ¶ 28,712 (1996).

judgment motions in appeals filed with the Board pursuant to the Contract Disputes Act, 48 U.S.C. §§ 7101-7109 (2018), nothing in the Board's rules authorizes summary judgment motions or application of the Federal Rules of Civil Procedure in travel and relocation expense matters. Instead, the procedural rules applicable to travel and relocation expense cases contemplate the submission of a claim to the Board, a response from the agency, and, if the claimant so desires, a reply from the claimant. 48 CFR 6104.402(a), .403(a), .404 (2019). Although we declined to accept Mr. Parshall's submission as a motion for summary judgment, we have considered it as a reply to the agency's response (along with an additional reply that Mr. Parshall submitted), given that, in it, Mr. Parshall addresses and directly cites to specific arguments raised in the agency's response.

*Kevin T. Aubart.*²

After the Board issued its decision in *Kevin T. Aubart*, a United States district court, pursuant to the Little Tucker Act, 28 U.S.C. § 1346 (2018), further considered Mr. Aubart's argument that TDY expenses should be available for the time that RCCP employees had to work at Schofield Barracks. The district court, quoting from prior Board precedent, correctly recognized that "[w]hether assignment to a particular station is temporary or permanent is a question of fact to be determined from the orders directing the assignment, the duration of the assignment, and the nature of the duties performed," as well as "the location where an employee expects, and is expected, to spend the greater part of his time." *Aubart v. McCarthy*, Civ. No. 17-00611, 2019 WL 3892408, at *3 (D. Hawaii Aug. 19, 2019) (quoting *Frank A. Conforti*, CBCA 828-TRAV, 07-2 BCA ¶ 33,693), *appeal docketed*, No. 19-16676 (9th Cir. Aug. 27, 2019); see *Tiffany H. Thompson*, GSBCA 14378-TRAV, 98-1 BCA ¶ 29,602 ("Whether an assignment [to a particular station] is permanent or temporary is a matter of fact, to be determined from the orders under which the assignment was made, the character of the assignment, its duration, and nature of the duties involved."). Reviewing much of the same documentation that has been presented here, the court found no dispute "that the RCCP employees . . . were not required to travel back and forth between Schofield Barracks and any other work sites, [that] employees were not able to work in Building 520 at Fort Shafter while it was undergoing renovations," and that the employee "perform[ed] the same essential duties at Fort Shafter as he did at Schofield Barracks." *Aubart*, 2019 WL 3892408, at *4. Granting summary judgment in the Government's favor, the court held that the "undisputed record supports the conclusion that [the employee's] permanent duty station was changed from Fort Shafter to Schofield Barracks, for the period of February 18, 2017 through November 14, 2017." *Id.* at *5. Because "an employee who is engaged in commuting between his or her residence and official duty station is performing personal business, not official business, for the Government, and the employing agency will not pay

² We recognize that, in *Christopher L. Hare*, CBCA 5261-TRAV, 16-1 BCA ¶ 36,462, we authorized local TDY travel expenses for employees who traveled to an "alternate work site" each day for an extended period of time while their PDS was temporarily closed while undergoing emergency renovations. In that matter, however, the agency did not dispute that the alternate work site was for TDY. "Whether an assignment . . . at a particular station is for temporary duty or permanent duty, is a fact which, ordinarily, is within the knowledge of the responsible officer who issues the orders making such assignment," 24 Comp. Gen. 667, 671 (1945), and agency officials with knowledge of the factual circumstances underlying an office closure have some discretion in making those determinations. Here, the agency permissibly elected to consider RCCP employees' move to Schofield Barracks a change in their PDS.

the transportation costs that the employee incurs while commuting,” the employee was not entitled to TDY mileage expenses. *Id.* at *6 (quoting *Frank A. Conforti*).³

Mr. Parshall disagrees with the Board’s and the district court’s decisions in *Kevin T. Aubart*. Citing a predecessor board’s decision in *Deborah F. Garrett*, GSBCA 15904-RELO, 03-1 BCA ¶ 32,127 (2002), Mr. Parshall argues that the Government lacked the discretion temporarily to move his PDS to Schofield Barracks, asserting that an agency is barred from making a temporary change of station (TCS) unless it anticipates a change of at least six months. He cites to the TCS provisions of the Federal Travel Regulation (FTR), which, consistent with statute, “allow an agency to pay a limited set of relocation allowances in connection with a [TCS] for a period of not less than 6, nor more than 30, months.” 62 Fed. Reg. 13770, 13771 (Mar. 21, 1997) (preamble in Federal Register notice creating the TCS FTR provisions now located at 41 CFR 302-3.400 to -3.429 (2019)). Although Mr. Parshall remained stationed at Schofield Barracks for more than six months, he notes that the Army originally anticipated that he and his fellow RCCP employees would only be at Schofield Barracks for fourteen weeks, and he believes that an assignment that, at its inception, the agency did not know would last more than six months cannot constitute a temporary PDS change. We disagree with Mr. Parshall’s argument. One of the two main purposes of the authorizing statute, 5 U.S.C. § 5737, in permitting an agency to authorize TCS for transfers in excess of six months is “to increase the employee’s satisfaction by providing an alternative to a long-term temporary duty travel assignment that would involve a prolonged separation from his/her immediate family.” *Id.* The relocation benefits that the statute envisions for temporarily transferred employees are irrelevant here since a local PDS change does not require either the employee’s or family’s relocation. Here, we have a local change of office made necessary because of the unavailability of the employee’s original PDS, with no change in duties or responsibilities of the employee. In such circumstances, the agency’s ability to designate a new PDS is not barred by the TCS provisions. *See Tiffany H. Thompson* (evaluation of whether PDS changed depends in part upon the “nature of the duties involved” at the new work location).

Further, contrary to Mr. Parshall’s argument, the mere fact that the Army did not issue an official SF 50 formally modifying the RCCP employees’ PDS does not mean that their PDS did not change, given that “[w]e do not view the ‘papers processed by an agency’ to be conclusive in determining the employee’s official duty station.” *Mark A. Majestic*, CBCA

³ Although neither Mr. Parshall, a non-party to the *Aubart* litigation, nor we are bound by the district court’s decision, it supports our understanding that the direction to RCCP employees to work at Schofield Barracks rather than Fort Shafter constituted a PDS reassignment.

6471-TRAV, 19-1 BCA ¶ 37,461 (quoting *James D. Fenwood*, GSBCA 15104-RELO, 00-1 BCA ¶ 30,658 (1999)). Here, following receipt of the Siegrist memorandum, the parties understood that, beginning February 17, 2017, Mr. Parshall and other RCCP employees would be spending all of their work time at Schofield Barracks until Fort Shafter renovations were completed. *Aubart*, 2019 WL 3892408, at *3. That is an important factor in determining the location of the PDS, see *Mark A. Majestic*, and the ultimate eight-and-a-half-month duration of the change in duty station similarly supports viewing the move as a change in PDS. See 36 Comp. Gen. 757, 758 (1957) (provisions for TDY “have not been considered to cover cases involving orders that direct the performance of duty where its foreseeable duration extends beyond reasonable temporary duty limitations” of five or six months). In the circumstances here, the agency’s determination that Schofield Barracks became the PDS is reasonable. See *Tracy Jones*, CBCA 15659-TRAV, 02-1 BCA ¶ 31,687; *James H. Williams*, B-212698 (Jan. 24, 1984).

Mr. Parshall has not identified any issues relating to his TDY argument that either the Board or the district court (relying on Board precedent) did not address in *Kevin T. Aubart*. Mr. Parshall is not entitled to TDY transportation expenses for commuting from his residence to his PDS. See *Orlando Sutton*, CBCA 2781-TRAV, 12-2 BCA ¶ 35,072; *Frank A. Conforti*.

Mr. Parshall’s Local Travel Argument

Mr. Parshall also asserts that he is entitled to local area transportation expenses under paragraph 020603 of the Joint Travel Regulations (JTR), titled “Travel within the PDS Local Area.” JTR 020603-A provides that a “civilian employee who travels in the local area of the PDS on official business may be eligible” for local area travel allowances “for travel during official duty hours” between “the residence and place of business *other than* the office or duty point.” JTR 020603-B.1.a (emphasis added). JTR 020603-A.1.c equates a “place of business other than the office or duty point” with an “alternate work site within the local area,” the travel to which an employee might seek reimbursement “for the distance that exceeds the [employee’s] normal commuting distance.”

Mr. Parshall’s reliance on this provision to claim entitlement to his excess commuting distance costs is misplaced. When he commuted between his residence and Schofield Barracks each day from mid-February to early November 2017, he was not commuting to an “alternate work site.” He was traveling directly to the PDS to which he was assigned during that time period. “[C]ommuting to and from work is not a covered activity” and is not considered as being performed during official duty time. *New York Transit Strike*, 60 Comp. Gen. 633, 635 (1981); see *Mark A. Majestic* (commuting time is “personal,” rather than a part of an employee’s official duties). Mr. Parshall’s reliance on JTR 020603 does not somehow

change the nature of his commuting costs. They are not reimbursable. *See Orlando Sutton; Frank A. Conforti.*

Decision

Mr. Parshall's claim is denied.

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