



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 4, 2020

CBCA 6625-RELO

In the Matter of CADY L. TYRON

Cady L. Tyron, Le Claire, IA, Claimant.

Catharine Debelle, Office of Counsel, United States Army Corps of Engineers, Alexandria, VA, appearing for Department of the Army.

O'ROURKE, Board Judge.

Background

Claimant, Cady L. Tyron, an employee of the United States Army Corps of Engineers (USACE), transferred from Prescott, Washington, to Pleasant Valley, Iowa, in August 2019, pursuant to official travel orders. Claimant lived with her fiancé and her three-year-old daughter, both of whom were listed as dependents on her orders. She had two cats, one dog, and multiple chickens, all of which would move with the family to Iowa. The agency authorized the use of a second personally owned vehicle (POV) for the move.

Claimant, her family members, and pets departed Washington on August 19, 2019, and arrived in Iowa on August 23, 2019. She drove one POV, and her fiancé drove the other. On the first night of their trip, they camped in Lolo, Montana, where claimant paid a \$10 cash fee for camp access. Since the money was placed into a drop box at the site, a receipt was not available. On the third night, they stayed at a hotel in North Dakota, where they incurred a \$15 fee for their pets. They camped in Minnesota on the final night of their trip and paid a \$26 camp access fee and \$12 for firewood. She obtained receipts for the pet fee, the second camp access fee, and the firewood.

Shortly after arriving at her new duty station, claimant filed a travel voucher seeking reimbursement of all travel expenses. USACE denied the following expenses: per diem for her fiancé (\$264.84); mileage for her second vehicle (\$342.80); the first camp access fee

(\$10); the hotel pet fee (\$15); and the firewood (\$12). USACE also denied full per diem for their last day of travel. Claimant seeks the difference between the reduced per diem she was paid and the full per diem she believes she is owed (\$273.37), in addition to her other claimed expenses. She asked the Board to review her claim and grant the requested reimbursements.

Discussion

Title 5 of the United States Code requires the Government to reimburse the travel or transportation expenses of an employee and the employee's immediate family members when the employee is transferring from one official duty station to another. 5 U.S.C. § 5724(a)(1) (2018). As a federal civilian employee, claimant is subject to the Federal Travel Regulation (FTR). Because claimant works for USACE, she is also subject to the Joint Travel Regulations (JTR). Together, these regulations govern the allowances to which she is entitled and identify any conditions or limitations on the same. In the event of a conflict between the JTR and FTR, the FTR controls. *Kevin D. Reynolds*, 2201-RELO, 11-1 BCA, ¶ 34,756 ("Any agency rule which is inconsistent with an FTR provision is consequently trumped by the FTR and must give way."). We analyze each of claimant's demands in light of these regulations.

Fiancé - Per Diem

Although claimant's fiancé was listed on her orders as a dependent, her fiancé does not meet the FTR's definition of a dependent for per diem purposes. The FTR defines a dependent as an immediate family member, which is further defined as a spouse, domestic partner, or unmarried child under the age of twenty-one. 41 CFR 300-3.1 (2019). A domestic partner is "an adult in a domestic partnership with an employee of the same sex" who "[c]ertif[ies] that they would marry but for the failure of their state or other jurisdiction (or foreign country) of residence to permit same-sex marriage." *Id.* Claimant's fiancé is a member of the opposite sex, but he is not her spouse, and no legal impediment to their marriage is claimed.

The USACE Logistics Activity (ULA) in Washington was responsible for processing claimant's transfer orders. The ULA initially told claimant that her fiancé could not be on her orders, then changed its position after *incorrectly* determining that he qualified as a domestic partner. The USACE Finance Center (UFC) at her gaining unit in Iowa processed her travel voucher and identified the error. This discovery resulted in a denial of expenses based on that error.

In her request to the Board, claimant pointed out that her former unit authorized the expenses and was willing to pay for them. She also stated that prior to her departure, she verified all of the authorizations on her orders with a representative from ULA and provided

emails showing ULA's confirmation of her entitlements. We acknowledge that claimant is in this position through no fault of her own, yet we, like the UFC, have no authority to change the result. The FTR prohibits the payment of per diem for claimant's fiancé, and the Board cannot grant what the law forbids. "Where a law or regulation specifically prohibits a payment, erroneous advice by a government official cannot negate that prohibition." *Andre G. Chritton*, CBCA 3080-TRAV, 13-1 BCA ¶ 35,229 (citing *Jesus R. Gonzalez*, CBCA 2777, 12-2 BCA ¶ 35,137). Accordingly, the claim for her fiancé's per diem is denied.

Pet Fee

The pet fee incurred by claimant was for the purpose of lodging her pets at the hotel in North Dakota. Claimant listed the \$15 pet fee as a miscellaneous expense on her travel voucher and had a receipt to substantiate the expense. Although the FTR permits reimbursement for costs related to the transportation and handling of dogs, cats and other house pets as miscellaneous expenses, it does not reimburse employees for any fees they incur to lodge or board their pets. 41 CFR 302-16.2(b) (table) (2018); *Joseph P. Piechota*, CBCA 6430-RELO, 19-1 BCA ¶ 37,377 (citing *Shawnie M. Peters*, CBCA 5520-RELO, 18-1 BCA ¶ 36,952). Here, claimant incurred the pet fee to lodge her pets at the hotel—an expense which the regulations specifically prohibit. The pet fee is denied.

Mileage for Second Vehicle

The agency authorized a second POV on claimant's orders, but stated it had to be driven, not shipped. What the agency failed to tell claimant was that the second POV had to be driven by an immediate family member, which we already established could not include claimant's fiancé. Citing a JTR provision, the agency denied claimant's request for mileage on the second POV because "she ha[d] no dependents of driving age." (Claimant's daughter was three years old at the time of her PCS). The relevant FTR provision states: "you may be authorized to transport only the number of POVs equal to the number of people on the relocation travel orders, who are licensed drivers, not to exceed two, while relocating within [the continental United States]." 41 CFR 302-9.302; *Lee P. Smith*, CBCA 5290-RELO, 17-1 BCA ¶ 36,620 (2016). Had the agency properly excluded claimant's fiancé from the travel orders, a second POV would not have been authorized since she had no qualified dependents who were also licensed drivers. As we previously noted, "erroneous advice from agency employees does not overcome the requirement that travel funds be obligated consistent with pertinent law and regulations." *David B. Cornstein*, CBCA 6454-RELO, 19-1 BCA ¶ 37,440. The claim for mileage for the second POV is denied.

Camp Access Fee

Claimant sought reimbursement for the \$10 camp access fee as a miscellaneous expense, rather than as a lodging expense. However, the FTR defines lodging expenses as

“expenses . . . for overnight sleeping facilities, baths, personal use of the room during daytime, telephone access fee, and service charges for fans, air conditioners, heaters, and fires furnished in the room when such charges are not included in the room rate.” 41 CFR 300-3.1. While campgrounds are not specifically mentioned, the Board has previously found that an overnight stay at a campground is a valid lodging expense. *See Stephen M. England* CBCA 3903-TRAV, 15-1 BCA ¶ 35,870 (overnight stay at a campground while TDY was a reimbursable lodging expense); *see also Michael L. Morgan*, GSBCA 13646-RELO, 97-2 BCA ¶ 29,021 (cost of employee’s stay at a campground due to relocation was considered a lodging expense).

To be reimbursed for lodging costs, the FTR requires the traveler to obtain lodging receipts. 41 CFR 301-52.4(b)(1). Despite this requirement, the regulations recognize occasions when it is impractical for a traveler to obtain a receipt. In such cases, the lack of lodging receipts must be fully explained on the travel voucher. The regulation cautions travelers that mere inconvenience will not suffice. *Id.* at (b)(2); *see Mark J. Lumer*, CBCA 2169-TRAV, 11-2 BCA ¶ 34,780 (reduced rate authorizations eliminated the need for lodging receipts, and agency’s request for such receipts more than nine years after employee commenced travel was impractical); *see also Kevin T. Aurbart*, CBCA 5572-RELO, 17-1 BCA ¶ 36,851 (statement from online booking service showing daily lodging rate and other fees was sufficient since no itemized hotel receipt was available (citing *Scott M. Torrice*, CBCA 2431-TRAV, 11-2 BCA ¶ 34,839)). In this case, as explained by claimant, the \$10 camp access fee was placed into a drop box at the site, and no receipt was available. Under the circumstances, we find it was impractical for claimant to obtain a receipt for her lodging at the campground. We grant the camp access fee.

Firewood

At the second campground, claimant purchased firewood for \$12 and claimed it as a miscellaneous expense on her travel voucher. The miscellaneous expense allowance (MEA) is intended to help defray some of the costs that federal employees incur when relocating due to an official transfer. 41 CFR 302-16.1. Miscellaneous expenses are relocation costs that are not covered by other relocation benefits. *Id.* 302-16.2. Examples include fees for disconnecting and connecting appliances, utility fees or deposits that are not offset by eventual refunds, vehicle registration fees, and drivers license fees. *Rebecca J. Lott*, CBCA 6354-RELO, 19-1 BCA ¶ 37,328.

To assist travelers and agencies in determining which miscellaneous expenses are eligible for reimbursement, the FTR provides a table of miscellaneous expenses, which states: “[e]xpenses allowable under this section include but are not limited to the following, and similar, items.” 41 CFR 302-16.2(b). Although the table does not include firewood, two other sections of the FTR provide additional guidance to help us decide whether firewood is a reimbursable expense. The first provision identifies a list of restricted items and the

second one describes the types of costs that are excluded from reimbursement. *Id.* 302-16.202, 203. Based on this additional guidance, we find that firewood is not a restricted item or a prohibited cost type, and is therefore eligible for reimbursement.

We also note that firewood might have been properly claimed as a lodging expense, since lodging expenses include “charges for fans, air conditioners, heaters, and fires furnished in the room when such charges are not included in the room rate.” *Id.* 300-3.1. Firewood was not included in the camp access fee at the second campground. Claimant paid for the firewood separately and provided a receipt to substantiate the expense. For these reasons, we grant the cost of the firewood.

Reduced Per Diem for Last Travel Day

Claimant stated that since her last day of travel was also her first day of TQSE, she and her dependents should have received full per diem for that day, rather than the reduced per diem she was paid. On this issue, the FTR states:

You may not receive reimbursement under both the actual TQSE allowance and another subsistence expense allowance within the same day, with one exception. If you claim TQSE reimbursement on the same day that en route travel per diem ends, your en route travel per diem will be computed under applicable partial day rules and you may also be reimbursed for actual TQSE you incur after 6:00 p.m. of that day.

41 CFR 302-6.110.

Based on this provision of the FTR, claimant was entitled to partial per diem for her last travel day plus any actual TQSE expenses incurred after 6:00 p.m. on that day. These entitlements apply to her and her daughter only.

Decision

The claims for the first camp access fee (\$10) and the firewood (\$12) are granted. In addition to paying these expenses, the agency shall recalculate claimant’s entitlements for her last day of travel, which was also her first day of TQSE, consistent with the above determination.

Kathleen J. O’Rourke
KATHLEEN J. O’ROURKE
Board Judge