



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 19, 2020

CBCA 6823-TRAV

In the Matter of KEVAN L. MULLINS

Kevan L. Mullins, San Rafael, CA, Claimant.

Ashley S. Silberhorn, Office of Chief Counsel, Internal Revenue Service, Department of the Treasury, Washington, DC, appearing for Department of the Treasury.

RUSSELL, Board Judge.

Claimant, Kevan L. Mullins, an Internal Revenue Service (IRS) employee, challenges his employer's calculation of expenses related to two temporary duty (TDY) assignments, taken in April 2018. Specifically, his claim focuses on expenses he believes are eligible for reimbursement, including those which the agency conceded in *Kevan L. Mullins*, CBCA 6210-TRAV, 19-1 BCA ¶ 37,244, motion for reconsideration denied, 20-1 BCA ¶ 37,515. Mr. Mullins also requests that the Board compel the IRS to produce reports on the status of Mr. Mullins' pending payments. As explained below, we deny Mr. Mullins' claim in its entirety.

Background

Mr. Mullins' claim relates to two TDY assignments that took place in April 2018. *See Kevan L. Mullins*. Mr. Mullins was authorized to take two separate trips, one to Los Angeles and one to Boston. The scheduled assignments took place on April 17–19 and April 24–26, respectively. In furtherance of the Los Angeles assignment, Mr. Mullins was authorized to travel from San Francisco International Airport (SFO) to Los Angeles on April 16. Mr. Mullins was supposed to stay in a hotel in Los Angeles from April 16–20, returning to San Francisco on April 20, 2018. Mr. Mullins was then authorized to travel from San Francisco to Boston on April 23, returning from Boston on April 27.

On both assignments, Mr. Mullins deviated from authorized travel. While Mr. Mullins traveled from SFO to Los Angeles, he checked out of his hotel one day early, on Friday, April 18. Mr. Mullins then drove to a family home in Palm Springs. Although Mr. Mullins performed official work on Friday and Saturday, April 19–20, the agency stated that the work was performed remotely and not related to his TDY assignment.

Mr. Mullins' TDY assignment in Boston began on April 23. Mr. Mullins was authorized to travel from SFO to Boston. Rather than follow the authorized travel plan, Mr. Mullins chose to fly from Palm Springs. Mr. Mullins checked out of his hotel one day early, on Thursday, April 26. Mr. Mullins then took a taxi and a train to New York City. On April 29, Mr. Mullins returned to SFO from Newark airport, rather than the airport in Boston authorized for Mr. Mullins' return flight. Although Mr. Mullins claimed that his travel to New York was to retrieve work materials, the official record did not reflect that the trip was actually related to any official purpose.

Mr. Mullins subsequently submitted two vouchers, one for each TDY assignment. Mr. Mullins sought an aggregate reimbursement of \$2956.87. The combined authorized reimbursement amount was \$4113.34. Mr. Mullins subsequently submitted a supplemental voucher in the amount of \$1948.60. The agency denied Mr. Mullins' supplemental claim. Following the denial of the claim, Mr. Mullins filed his first travel claim with the Board (CBCA 6210-TRAV).

Prior to the issuance of the Board's decision in CBCA 6210-TRAV, the agency conceded that Mr. Mullins was due reimbursement for certain expenditures totaling \$522.10. Specifically, the agency acknowledged that Mr. Mullins was owed meal and incidental expenses for certain days during both trips, airport parking on April 20 and 27, mileage traveled by Mr. Mullins on his return home from Boston on April 29, and fees for one checked bag on each flight. The Board issued a decision denying the remainder of Mr. Mullins' claim, and dismissed his request for sanctions against the agency. The Board found that the agency fully reimbursed Mr. Mullins for his circuitous travel based on review of the constructive cost of the travel. In its decision, the Board relied on *Alfonso Diaz Del Castillo*, CBCA 2250-TRAV (June 21, 2011), which states, "[W]hen an employee chooses for reasons of personal preference to travel by a route or method different from the one authorized by his agency, the [Federal Travel Regulation (FTR)] requires the agency to '[l]imit reimbursement to the constructive cost of the authorized method of transportation, which is the sum of per diem and transportation expenses the employee would reasonably have incurred when traveling by the authorized method of transportation.' . . . [41 CFR] 301-70.105[.]" The Board's decision became final when the Board denied Mr. Mullins' request for reconsideration of the decision. *See Kevan L. Mullins*, CBCA 6210-TRAV, 20-1 BCA ¶ 37,515.

Shortly after the Board issued its final decision, the agency recognized a typographical error in its calculation of reimbursable expenses included in its responsive briefing. After correcting the error, the agency lowered the reimbursable amount to \$515.36. The agency notified Mr. Mullins of the discrepancy, and Mr. Mullins agreed to the corrected amount.

Mr. Mullins filed the present claim with the Board on May 18, 2020. Specifically, Mr. Mullins seeks the payment of the conceded amount, late fees, interest related to the unpaid amount, and additional expenses related to his unauthorized travel. As for the latter, he is primarily seeking yet a third review of his travel claim brought in CBCA 6210-TRAV. After Mr. Mullins filed the current claim with the Board, the agency paid Mr. Mullins the amount conceded in CBCA 6210-TRAV. Additionally, the agency has acknowledged that Mr. Mullins is entitled to late fees and interest associated with the conceded amount, consistent with 41 CFR 301-52.19 (2019).

Discussion

It has long been recognized by the Board, that when a final judgment has been entered, *res judicata* bars repetitive litigation when: 1) the parties are identical or in privity; 2) the first suit proceeded to a final judgment on the merits; and 3) the second claim is based on the same set of transactional facts as the first. *CH2M-WG Idaho, LLC v. Department of Energy*, CBCA 6147, 19-1 BCA ¶ 37,339; *Phillips/May Corp. v. United States*, 524 F.3d 1264, 1268 (Fed. Cir. 2008). *Res judicata* not only bars litigation of matters raised in the first suit, but matters that could have been raised in the first suit, as well. *Christopher R. Chin-Young*, CBCA 4797-RELO, 15-1 BCA ¶ 36,091. The principle of *res judicata* has been applied to travel and relocation claims before the Board. *Id.*; *Dana G. Kay*, CBCA 2506-RELO, 12-1 BCA ¶ 34,982.

1. Baggage Fees

Mr. Mullins is attempting to reassert claims that the Board denied in 6210-TRAV. First, Mr. Mullins once again claims that he was authorized by the IRS to check two bags during his travel. In his initial claim, the agency conceded that Mr. Mullins was entitled to reimbursement for baggage fees. However, the reimbursement costs would be limited to a single bag. Further, the Board found that the agency retained discretion to authorize reimbursement for a second bag, consistent with 41 CFR 301-12.2(d). The Board also found that Mr. Mullins failed to explain why a second bag was necessary and in furtherance of any government interest. In his present claim, Mr. Mullins states that the second bag was necessary to carry materials related to his TDY assignment. Although Mr. Mullins avers that the second bag was used for a work-related reason, this fact does not allow for what would ultimately amount to *de facto* reconsideration of the Board's previous decision. Here, the parties to both claims are identical, the first claim reached a final decision on the merits, and

the present claim arises from the same set of transactional facts as the first. As a result, the claim asserted by Mr. Mullins meets the elements necessary to establish *res judicata*. Thus, the Board denies Mr. Mullins' claim for reimbursement of fees for a second bag.

2. Transportation Fees

Next, Mr. Mullins reasserts a claim to reimbursement for \$15 in taxi expenses, and \$150 in train fare while traveling from Boston to New York. In the present claim, Mr. Mullins characterizes the transportation costs as being related to travel from his TDY location in Boston to his lodging outside of his designated TDY area. As the Board stated in Mr. Mullins' initial proceeding, an agency is not responsible for any additional expenses caused by claimant's choice to use a circuitous route unnecessary for the performance of official duties. *Kevan L. Mullins*; see 41 CFR 301-2.4. Even if this were not the case, Mr. Mullins' claim for taxi and train expenses meets the necessary elements for *res judicata*. Therefore, the Board denies Mr. Mullins' claim for taxi and train fare.

3. Non-Conventional Lodging Costs

Mr. Mullins also argues that he is entitled to reimbursement of costs incurred while staying in unauthorized lodging outside of his designated TDY area on April 26. Mr. Mullins claims that the lodging expenses are from April 25, but the agency argues that this is likely an error, as Mr. Mullins was authorized, and has been reimbursed, for lodging on April 25. This also includes taxes imposed on Mr. Mullins' choice of lodging. Mr. Mullins states that he is owed these costs in conformance with 41 CFR 301-11.7, as well as GSA Bulletin, FTR 19-04-5(b). As stated above, *res judicata* not only bars claims that have been addressed, but claims that could have been included in a previous dispute. Mr. Mullins failed to address these non-conventional lodging costs during the initial proceeding. As such, Mr. Mullins is barred from bringing the claim now. Thus, Mr. Mullins' claim for non-conventional lodging costs is denied.

4. Airport Transportation Cost

Mr. Mullins also claims that he incurred costs related to airport travel from his lodging in New York to Newark airport on April 27. In calculating these costs, Mr. Mullins includes fare for tolls, as well as the taxi driver's tip. Mr. Mullins argues that he should be eligible for the costs as if he had, in fact, traveled to his designated airport from his TDY station. However, this claim is also barred by *res judicata*. Mr. Mullins had an opportunity to raise this claim during the initial proceedings and failed to do so. Thus, Mr. Mullins' claim for airport transportation costs is denied.

5. Baggage Storage Fees

Mr. Mullins next claims that he should be reimbursed for \$15 in baggage storage fees as the result of his official travel. Mr. Mullins argues that the cost of bag storage was “officially necessary” for his TDY assignment. However, this claim could have been brought in CBCA 6210-TRAV. As such, this claim is denied.

6. Corrected Cost Computations

In his reply submission, Mr. Mullins asserts that there are a variety of miscellaneous costs that were not included in the agency’s reimbursement calculations. While the majority of those have been addressed by the Board, Mr. Mullins asserts additional entitlement to costs related to his flight to and from Boston. In particular, Mr. Mullins argues that he has not been fully reimbursed for the constructive cost of his combined flights from San Francisco to Los Angeles, and Los Angeles to Boston. Mr. Mullins states that he has been reimbursed for a portion of the trip, but that he is still owed the constructive costs of his return flight from Los Angeles to San Francisco. However, the Board has previously addressed costs related to Mr. Mullins’ flights to and from Boston in CBCA 6210-TRAV. In addressing these costs, the Board found that “the agency is not liable for additional travel costs incurred by Mr. Mullins’ decision to return to San Francisco by a route of his own choosing, and for his own benefit.” As a result, a claim relating to the constructive costs of Mr. Mullins’ flights will not be reconsidered by the Board. Mr. Mullins’ claim is precluded by *res judicata*, and therefore is denied.

7. Status Reports

Lastly, Mr. Mullins has requested that the Board compel the agency to provide him with status reports on the payment of the reimbursement funds conceded by the agency. As of the date of this decision, the agency has paid Mr. Mullins the amount of \$515.36. The agency has also conceded that Mr. Mullins is entitled to late fees and interest as a result of the timing of the payment. The agency states that it is currently calculating the amount of interest and late fees owed to Mr. Mullins, consistent with 41 CFR 301-52.19. Because the agency has paid Mr. Mullins the underlying amount, the Board will not compel the agency to produce status reports as it calculates the amount of interest and late fees owed. As such, Mr. Mullins’ request for the Board to compel status reports on payment is denied.

Decision

Mr. Mullins' travel claim is denied.

Beverly M. Russell

BEVERLY M. RUSSELL
Board Judge