



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 8, 2022

CBCA 7297-TRAV

In the Matter of ANDREW D.

Andrew D., Claimant.

Trina J. House, Financial Management Analyst – Travel Affairs, Bureau of International Narcotics and Law Enforcement Affairs, Department of State, Washington, DC, appearing for Department of State.

O'ROURKE, Board Judge.

A federal employee traveled to the United States from his overseas assignment to participate in training in Virginia. He received permission to depart early for the training in order to attend his grandmother's funeral in New Jersey. While the employee was in New Jersey on leave, the in-person portion of the training was cancelled. Under the circumstances described below, we find that the employee assumed the risk of cancellation of the official event and that he is not entitled to reimbursement and must return to the Government the travel costs he received.

Background

Claimant is a federal employee with the Bureau of International Narcotics and Law Enforcement Affairs (INL) and is assigned overseas. Agency officials recommended that INL staff sign up for a training seminar scheduled for August 17–21, 2021. Claimant received approval to attend the training in-person in Falls Church, Virginia.

In July 2021, claimant's grandmother passed away. The funeral was scheduled to take place in New Jersey, ten days before the start of the training. Claimant received approval to depart early for the training in order to attend his grandmother's funeral on August 7th. Claimant contacted agency travel officials for information regarding cost-constructed travel but did not complete that process.

As reflected in claimant's travel orders, the itinerary showed the following: (1) a flight from claimant's assigned overseas location to Newark, New Jersey, on August 6, 2021; (2) rail travel from Newark to Washington, D.C., on August 16, 2021; and (3) a return flight from Washington, D.C., to claimant's assigned overseas location on August 23, 2021. Consistent with his travel orders, claimant flew directly to Newark on August 6th and attended his grandmother's funeral the following day. Claimant remained in New Jersey on leave until his scheduled departure date of August 16th to Washington, D.C. However, on August 10th, the in-person portion of the training was canceled due to the COVID pandemic. Claimant and his supervisor discussed options for conducting other official business in-person while in the United States, but claimant's wife became ill and could not care for their child, so claimant decided to return to his home and family overseas on August 12th.

Upon his return, claimant filed a travel voucher for the trip, which reflected a revised itinerary of round-trip air travel between claimant's overseas duty location and Newark, New Jersey, departing on August 6th and returning on August 12th. The Government initially paid the voucher, but after an audit of the travel claim, the agency requested reimbursement of the funds. The agency reasoned that the Government could not fund a personal trip, and since the travel was not cost-constructed and claimant did not conduct any official business while he was in the United States, claimant was responsible for all of the costs associated with his travel. Claimant asked this Board to review the agency's decision.

Discussion

The Department of State employs members of both the Foreign Service and the Civil Service. The Foreign Affairs Manual (FAM) governs travel of Foreign Service employees, whereas the Federal Travel Regulation (FTR) applies to members of the Civil Service. *See* 14 FAM 511.2-1(a); 41 CFR 300-1.1 (2021). Although the record does not clarify to which service claimant belongs, that omission is immaterial to our analysis as we reach the same conclusion under both sets of rules.¹

The purpose of claimant's *official* travel was to attend training in Falls Church, Virginia. When making official travel arrangements, the FTR instructs federal employees to utilize "the usually traveled route":

¹ Under the authorization history of claimant's travel orders, it indicates that claimant traveled under the FTR. However, since the agency's response makes multiple references to the FAM, we examine this case under both the FAM and the FTR.

§ 301-10.7 How should I route my travel? You must travel to your destination by the usually traveled route unless your agency authorizes or approves a different route as officially necessary.

41 CFR 301-10.7.

The FAM provides similar guidance for routing travel: “All official travel must be by a usually traveled route, referred to as ‘direct travel,’ or ‘direct route’ A usually traveled route is one or more routes that are essentially the same in travel time and cost to the U.S. Government.” 14 FAM 585.1. In this case, the usually traveled route was from claimant’s overseas location to the training location and then back overseas. There was no *official* reason to book travel directly to New Jersey. Claimant’s travel to Newark was for personal reasons and therefore constituted an indirect or circuitous route.

Both the FAM and the FTR require employees to compute the constructed cost of travel by a direct route when traveling by an indirect route to accommodate personal travel. The FTR provides:

§ 301–10.8 What is my liability if, for personal convenience, I travel by an indirect route or interrupt travel by a direct route? Your reimbursement will be limited to the cost of travel by a direct route or on an uninterrupted basis. You will be responsible for any additional costs.

41 CFR 301-10.8. Similarly, the FAM states, “When a traveler deviates from a usually traveled route for personal convenience, the traveler must bear the extra expense for the portion of the journey that is by an indirect route” 14 FAM 585.2-1. It further provides that “reimbursement of travel costs incurred on that portion of the journey which is traveled by an indirect route . . . is limited to the costs which would have been incurred by traveling on a usually traveled route.” 14 FAM 585.2-2.

This Board and its predecessor tribunals have long held that employees who deviate from the direct route and travel on a circuitous route for personal reasons are only eligible to be reimbursed for the constructed costs of the direct route. *Scott A. Winterrowd*, CBCA 6880-RELO, 20-1 BCA ¶ 37,684, at 182,972 (employee held responsible for additional costs due to delays from a ferry strike while traveling on an alternate route); *Alfonso Diaz Del Castillo*, CBCA 2250-TRAV, slip op. at 4 (June 21, 2011) (employee who used personal aircraft for temporary duty (TDY) travel was only entitled to reimbursement of constructed costs of travel by commercial airfare and rental car); *Lisa Schwartz*, GSBCA 16669-TRAV, 05-2 BCA ¶ 33,040, at 163,762-63 (employee who combined personal and official travel could not be reimbursed lodging expense incurred during personal travel portion of trip).

In the instant case, the training was canceled by the agency, so there was no official travel to perform. The issue we must decide is which party bears the financial risk of the cancellation. In *Catherine E. Grow*, CBCA 2463-TRAV, 11-2 BCA ¶ 34,885, we held that “[a]n employee assigned TDY who departs prematurely for the TDY destination on authorized annual leave, which would not have taken place but for the TDY assignment, should not be penalized by reason of a subsequent cancellation of the TDY.” *Id.* at 171,569. That case turned on a provision in the Joint Travel Regulations that specifically addressed cancellation of TDY orders after commencement of travel and while on authorized leave:

When an employee is on leave en route to a TDY station and the TDY order is canceled, the employee is authorized travel and transportation allowances for travel performed, provided the order is canceled on/after the date travel was required to begin. In such case, the allowances payable must not exceed the constructed allowances payable for travel from the [permanent duty station] to the TDY station and return over a usually traveled direct route, provided that official travel to the TDY station is authorized prior to departure on annual leave.

Id. at 171,569.

In *Grow*, the agency denied reimbursement of the travel expenses because it interpreted the phrase “the order is canceled on/after the date travel was required to begin” to mean that the official travel portion of the trip must have commenced to be eligible for travel expenses due to the cancellation of the TDY. In other words, an employee must be in an official travel status—not on personal travel or on leave—in order to be reimbursed for the cost-constructed travel expenses. The Board disagreed, pointing to an exception to the general rule (that when an employee proceeds to a point away from her official duty station while on annual leave, she assumes the obligation of returning to the official duty station at her own expense). *F.A. Calabrese*, 56 Comp. Gen. 96, 96 (1976).

The Government Accountability Office (GAO), one of our predecessors in deciding travel claims by government employees, found an exception to the above rule in cases where an employee travels on approved annual leave to a leave point prior to, but in anticipation of, completing a previously scheduled TDY assignment, and the TDY is canceled after the employee travels to the leave point. In those cases, the GAO held that reimbursement is authorized if two conditions are met. The first condition is that the cancellation of the TDY must be beyond the employee’s control. The second condition is that it can be determined that, but for the TDY assignment, the employee would not have scheduled the leave and traveled to the leave point.

We have consistently held that an employee assigned to temporary duty who departs prematurely for an alternate destination on authorized annual leave which he would not have taken but for the temporary duty should not be penalized by reason of a subsequent cancellation of the temporary duty assignment. In such cases reimbursement to the employee for travel expenses incurred is limited to the expense that would have been incurred had he traveled from headquarters to the temporary duty station and returned by the usually traveled direct route.

H.A. Leibert, 52 Comp. Gen. 841, 842 (1973); *see also Arnaud J. Loustalot*, B-122739 (Feb. 10, 1977).

Both of those conditions were met in *Grow*. A government shutdown caused the cancellation of the TDY, and statements in the record substantiated the fact that the employee would not have taken leave had the TDY not been authorized. Accordingly, this Board granted the employee's claim in *Grow*. The same conditions are not present in the instant case, however. Instead, we find the facts in *Albert L. Modiano*, B-245519 (Feb. 18, 1992) to be most relevant here. In *Modiano*, an employee based in Washington, D.C., arranged to take two weeks of leave on Cape Cod with his family immediately prior to a three-week training course in Boston, Massachusetts. At the conclusion of the employee's leave, the training was canceled and the employee was instructed to return to his permanent duty station (PDS). The employee's family remained on the Cape. Although the agency recommended payment of the travel expenses, finding that they were incurred in good faith in anticipation of official training, the GAO denied the employee's claim for travel expenses. "Since Mr. Modiano did spend two weeks at his vacation site, and his family remained there after he returned to Washington, it is not clear to us that he would not have traveled to Massachusetts for his vacation but for the training assignment."

In the case now before us, claimant had no control over the cancellation of the TDY—just like in *Grow* and *Modiano*. Claimant was, however, presented with an opportunity to conduct other official business at the TDY location, which he declined to do. This fact distinguishes claimant's circumstances from those in which a government shutdown occurred or the employee was instructed to return to the PDS. Unlike those employees, claimant had the opportunity to mitigate his financial risk but chose not to do so. He stayed at his leave location for two additional days after learning of the cancellation, then incurred substantial additional costs to change his return flight from his leave destination, rather than his TDY location. Even if we disregard claimant's wasted opportunity to salvage the official travel and mitigate his financial risk, we find that claimant does not meet the second condition established by the GAO, which was reaffirmed by the GSBICA and by this Board. In reviewing the record, we cannot discern whether claimant would not have taken leave but for the training assignment. There is no evidence that suggests he would *not* have attended

his grandmother's funeral but for the TDY assignment to Washington, D.C. As such, the aforementioned exception to the general rule was not met in this case.

Other factors we consider relevant to placing the financial burden on claimant include the timing of the training vis-a-vis the funeral and the fact that the regulations do not permit an employee to recover for travel to the funeral of a grandparent (not being part of the immediate family, as defined). The training was scheduled during a worldwide pandemic, when international travel and training events were vulnerable to cancellations. The risk that the TDY would be cancelled was high. Departing ten days early for the training exacerbated that risk and prevented the Government from avoiding significant costs when the TDY was actually cancelled. But for claimant's personal travel, the official portion of the trip, and its attendant costs, would have been avoided. The agency also pointed out that claimant failed to calculate the constructed cost of his travel, which is required when combining personal and official travel. Claimant was aware of this requirement but did not comply with it. When the TDY was cancelled, the travel orders were modified to reflect claimant flying round-trip from his overseas PDS to his leave destination. The entire trip was personal in nature. Since agency regulations do not cover the costs of emergency visitation travel to attend the funeral of a grandparent, claimant should not recover those same costs by a different method. 3 FAM 3744(a)(2).

Finally, claimant's contentions that agency officials approved the original and revised itineraries are unavailing here. It is well-established that the actions of agency officials do not provide a basis for reimbursement that is contrary to prevailing law or regulations. *David B. Cornstein*, CBCA 6454-RELO, 19-1 BCA ¶ 37,440, at 181,952; *Charles A. Hines*, CBCA 4846-RELO, 16-1 BCA ¶ 36,392, at 177,428 (citing *Lisa A. Lindman*, CBCA 2893-RELO, 13 BCA ¶ 35,230, at 172,842). It is the traveler, not the taxpayer, who bears the risk of any additional costs incurred when traveling an indirect route for personal convenience and failing to comply with the procedures set forth in the travel regulations. Signatures and approvals by agency officials on travel orders do not permit that which was unauthorized in the first place.

Decision

Claimant shall pay to the agency the full amount of the travel expenses it erroneously reimbursed him.

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