



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 8, 2022

CBCA 7366-TRAV

In the Matter of KELSEY B.

Kelsey B., Claimant.

Megan E. Parker, Office of Assistant Chief Counsel, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

RUSSELL, Board Judge.

Claimant, Kelsey B., a border patrol agent with the Department of Homeland Security (DHS), United States Customs and Border Protection (CBP), seeks to retain \$444 paid to her for actual hotel expenses incurred during a temporary duty (TDY) assignment. For the reasons stated below, we deny the request.

Background

Beginning on December 13, 2021, claimant was assigned to TDY at the southwest border (SWB) in Eagle Pass, Texas. Claimant was one of dozens of border patrol agents and National Guard members on TDY at the SWB to handle a surge of migrants in that region. Due to the volume of border patrol agents and National Guard members seeking hotel rooms near the SWB, hotel costs soared and many agents could not find rooms at rates below the authorized per diem of \$96 per night. On some nights, they were unable to find rooms below the 300% ceiling of \$288 per night. The 300% ceiling represents the maximum reimbursement authorized for actual hotel expenses while an employee is on TDY. Claimant and other agents tried to negotiate acceptable rates with hotels but were not always able to do so.

In response, the Acting Deputy Chief of the United States Border Patrol authorized, in writing, the reimbursement of actual hotel expenses. Claimant then submitted appropriate documentation to support her hotel expenses which included four nights at a rate of \$399 – \$111 over the ceiling of \$288. DHS initially reimbursed her fully, but a subsequent audit by CBP found that claimant was improperly reimbursed for the excess \$111 over the rate ceiling for each of the four nights. On March 29, 2022, CBP ordered claimant to return this excess reimbursement, which totaled \$444.

Claimant timely filed the instant claim and, in support, submitted documentation showing communication with CBP about the surge in hotel rates at the SWB and her attempts to negotiate acceptable rates. She also included documentation showing written approval of the hotel overages from the Acting Deputy Chief. She noted that it was impossible to get a hotel room at the maximum rate because of the influx of federal agents, that she acted prudently to negotiate the lowest rates possible, and that she received approval from an authorized official for the higher rate.

Discussion

DHS is bound by the Federal Travel Regulation (FTR). The FTR states, in pertinent part, “The maximum amount that you may be reimbursed under actual expense is limited to 300% (rounded to the next highest dollar) of the applicable maximum per diem rate.” 41 CFR 301-11.303 (2021) (FTR 301-11.303). Further, “[y]our reimbursement is limited to the 300% ceiling. There is no authority to exceed this ceiling.” FTR 301-11.305. As noted by CBP in its response to the claim, this Board has held that extraordinary circumstances affecting hotel rates do not allow an agency employee to claim reimbursement above this ceiling, even if prior approval is obtained from an agency official. *See Donald M. McKinnon, Jr.*, CBCA 2807-TRAV, 12-2 BCA ¶ 35,079, at 172,281 (finding no claim to reimbursement above the 300% ceiling where employee traveled to Indianapolis during the Super Bowl and hotel rates were high, even though prior agency approval was obtained).

Here, claimant similarly obtained agency approval for a rate in excess of the 300% ceiling in a region where hotel availability was limited and rates were high. Claimant acted prudently to obtain the lowest possible hotel rate. Unfortunately, “such factors do not demonstrate entitlement when the regulation expressly prohibits the payment sought.” *Id.* Claimant’s position that it was impossible to get a rate below the ceiling may well be correct; indeed, her documentation supports this claim. Claimant even sought approval from the Acting Deputy Chief, an official on whose advice she should have been able to rely. That said, “[t]he Board cannot enlarge a claimant’s rights beyond the parameters set out in regulation, even if the employee is misled by Government actions.” *Elizabeth D. Gosselin*, CBCA 2208-RELO, 11-2 BCA ¶ 34,876, at 171,537. While we implore DHS and CBP to

limit reimbursement approvals to amounts authorized by FTR regulations so that mistaken approvals do not become the burden of the employee, we must still deny the present claim.

Decision

For the reasons stated above, the claim is denied.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge