



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 24, 2024

CBCA 8004-TRAV

In the Matter of ERICA D.

Erica D., Claimant.

Suzanne Milihram, Director, Division of Travel Policy and Operations, Office of Financial Management, Centers for Medicare and Medicaid Services, Baltimore, MD, appearing for Department of Health and Human Services.

BEARDSLEY, Board Judge (Chair).

Claimant disputes the decision of the Centers for Medicare and Medicaid Services (CMS) to require claimant to reimburse the agency for its overpayment of her travel expenses arising from her use of a non-contract carrier flight to travel from Atlanta, Georgia, to Philadelphia, Pennsylvania. CMS asserts that claimant must repay the \$330 difference between the cost of her flight and the cost of a contract carrier flight. Claimant's agency's approval of the non-contract carrier flight does not obligate the Government to pay the increased cost. We agree that claimant must reimburse the agency.

Background

Claimant was a civilian employee with CMS in the Atlanta office. On October 25, 2022, claimant traveled to Philadelphia to attend a strategic planning meeting. Claimant traveled on a Tuesday, the day before her meeting. Claimant booked her flight on a non-contract carrier at a cost of \$551.20. Claimant claims that her flight originally cost \$467.20 but increased to \$551.20 when the flight was auto-cancelled because her manager had not timely approved it and she had to rebook the flight the night before she left. In her justification for use of the non-contract carrier, claimant stated that the "[f]light [was] based on availability and arrival at strategic planning meeting." Claimant explained that the

contract carrier flights all included one or more layovers. Given the high volume of flight cancellations and redirections at the time of her travel, she selected the non-contract carrier flight without a layover to ensure she arrived at her destination on time and “could fly during working hours.” The agency authorized her flight.

CMS conducted a routine post-payment audit of claimant’s travel voucher and, on December 16, 2022, notified claimant that she had been overpaid for her travel in the amount of \$396.32. Of that total, CMS found that claimant owed CMS \$330 for the difference between the contract carrier flight and the non-contract carrier flight, as required by the Federal Travel Regulation (FTR).¹ CMS noted that there were multiple contract carrier flights available on the day that claimant traveled. Specifically, CMS identified a contract carrier direct flight that cost \$221.20 and flew during normal working hours, departing Atlanta at 3:15 p.m. and arriving in Philadelphia at 5:22 p.m. Claimant’s return flight departed at 6:33 p.m. and arrived in Atlanta at 8:50 p.m.—outside of normal working hours. Claimant disputes the agency’s demand for the difference between her flight and a contract carrier flight.

Discussion

As a federal civilian employee, claimant is subject to the FTR. *Aydin C.*, CBCA 7493-TRAV, 22-1 BCA ¶ 38,233, at 185,664. The FTR requires federal employees to use a contract carrier service when they travel by air, unless an exception applies. 41 CFR 301-10.110 (2023) (FTR 301-10.110). The exceptions are:

- (a) There are no accommodations available on any scheduled contract City Pair Program flight arriving to [the employee’s] destination in time to accomplish the purpose of [the employee’s] travel or use of contract service would require [the employee] to incur unnecessary overnight lodging costs which would increase the total cost of the trip;
- (b) The contractor’s flight schedule is inconsistent with explicit policies of [the employee’s] Federal department or agency with regard to scheduling travel during normal working hours;

¹ In addition to the non-contract carrier expense, CMS demanded repayment in the amount of \$26.15 for a non-authorized seat selection/preferred seat fee, \$39.45 for a travel management company (TMC) fee, and \$0.72 for tipping greater than the allowed fifteen percent for a taxi service. In her claim to the Board, claimant only contests the repayment of the non-contract carrier expense. The Board will, therefore, only review the non-contract carrier expense.

- (c) A non-contract carrier offers a lower fare to the general public that, if used, will result in a lower total trip cost to the Government (the combined costs of transportation, lodging, meals, and related expenses considered); or
- (d) Cost effective rail transportation is available and is consistent with mission requirements.

FTR 301-10.111. An employee is “responsible for any additional costs or penalties incurred . . . resulting from unauthorized use” of a non-contract carrier when contract service is available and the exceptions are not met. FTR 301-10.113.

None of the exceptions apply to claimant’s travel. Avoiding layovers during travel is not one of the reasons provided in the FTR for using a non-contract carrier. In fact, there was at least one contract carrier direct flight on that Tuesday that was less expensive. Although CMS noted that it does not have a policy stating that travel cannot occur outside of normal working hours, the contract carrier direct flight flew during normal working hours, arriving the day before her meeting. Accordingly, claimant’s circumstances did not permit use of a non-contract carrier.

The fact that the cost of claimant’s ticket increased due to her manager’s delay in approving her travel also does not reduce the amount owed by claimant. Claimant did not have to rebook her ticket on a non-contract carrier. Moreover, an agency’s delay in approving travel causing an employee to rebook a flight is not a listed exception to the use of a contract carrier.

Claimant points out that she obtained approval for her flight from her agency. Even though claimant obtained approval for her travel and relied on that authorization to her detriment, the Board has found, repeatedly, that erroneous authorizations, reflecting mistaken assumptions on the part of authorizing officials, cannot obligate the Government to expend monies contrary to regulation. *Scott A. Winterrowd*, CBCA 6680-RELO, 20-1 BCA ¶ 37,684, at 182,972-73 (citing *Robert R. Devisser*, CBCA 5094-RELO, 16-1 BCA ¶ 36,332 and *David B. Cornstein*, CBCA 6454-RELO, 19-1 BCA ¶ 37,440); *see also* *Brian D. Zbydniewski*, CBCA 4951-TRAV, 16-1 BCA ¶ 36,223, at 176,715 (quoting *Thomas A. Gilbert*, CBCA 2214-RELO, 11-2 BCA ¶ 34,786, at 171,206). The Board, like the agency, has no authority to authorize a payment that is not permitted by the FTR. *Milton Brown*, CBCA 4998-RELO, 16-1 BCA ¶ 36,205, at 176,663-64 (2015) (citing *Benjamin A. Knott*, CBCA 4579-RELO, 15-1 BCA ¶ 36,019, at 175,920; *James A. Kester*, CBCA 4411-RELO, 15-1 BCA ¶ 35,966, at 175,729; and *Bruce Hidaka-Gordon*, GSBCE 16811-RELO, 06-1 BCA ¶ 33,255, at 164,834).

Decision

Claimant must repay the difference between the price of her flight (\$551.20) and the price of the contract carrier direct flight (\$221.20) in the amount of \$330.

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge