

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 19, 2006

GSBCA 16846-RELO

In the Matter of DAVID P. BROCKWAY

David P. Brockway, Vienna, VA, Claimant.

Shirley L. Autry, Deputy Director, Finance, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

PARKER, Board Judge.

Background

When the Department of the Army's Corps of Engineers sent David P. Brockway to Afghanistan on a temporary change of station assignment in June 2005, the agency "in-processed" him from a facility located in Winchester, Virginia. Mr. Brockway did not have to stay in a hotel during the in-processing because he lived eleven miles away from the facility, in Berryville, Virginia. His official duty station was in Baltimore, Maryland. The record does not disclose how Mr. Brockway normally commuted to work.

While Mr. Brockway was in Afghanistan, he became divorced, and his ex-wife and children stopped leasing the home in Berryville and moved to Texas. When he returned from Afghanistan for "out-processing" in Winchester, Mr. Brockway stayed in a hotel and rented a car because he no longer had a residence or a car in the area. The Army has refused to reimburse Mr. Brockway for these expenses, which total \$436.21, because Mr. Brockway's official home of record was only eleven miles away in Berryville and he had not officially informed the agency that he no longer resided there. Mr. Brockway has asked the Board to review the agency's decision to deny reimbursement, pointing out that his return travel orders

of November 4, 2005, specifically authorized three days of temporary duty (TDY) and use of a rental car in Winchester.

Discussion

The parties agree that Mr. Brockway performed three days of TDY travel on his way back from Afghanistan to his permanent duty station in Baltimore, Maryland. According to the Federal Travel Regulation (FTR), an employee is eligible for per diem (or actual expense reimbursement) when:

- (a) You perform official travel away from your official station, or other areas defined by your agency;
- (b) You incur per diem expenses while performing official travel; and
- (c) You are in a travel status for more than 12 hours.

41 CFR 301-11.1 (2005).

Since Mr. Brockway incurred per diem expenses while performing official travel and was in a travel status for more than twelve hours, his TDY obviously met the requirements of subsections (b) and (c) above. In addition, because the travel was away from his official station, Baltimore, the travel met the requirement in subsection (a) that the employee perform travel away from his official duty station. Thus, the question to be decided is whether Mr. Brockway's travel met the second requirement of subsection (a) -- that the official travel be away from "other areas defined by your agency."

The Army based its denial of Mr. Brockway's claim on provisions of the Department of Defense's Joint Travel Regulations (JTR), the regulations that implement and supplement the FTR for civilian employees of the Department. The provisions state as follows:

- C. Per Diem at the PDS [permanent duty station]
 - 1. Per Diem Not Allowed
 - a. Per diem cannot be authorized or paid within the PDS limits (see definition, Appendix A)^[1], or at, or within the

¹ The JTR defines the term PDS for purposes of TDY as "[t]he corporate limits of the city or town in which stationed." JTR app. A.

vicinity of, the place of abode (residence) from which the employee commutes daily to the official station

b. Except as indicated in par. C4552-C2, per diem is not authorized or payable at the old or new PDS for TDY en route that is part of PCS [permanent change of station] travel.

c. Non-payment of per diem applies even if the traveler vacated the permanent quarters at the old PDS and lodged in temporary quarters during the TDY period.

JTR C4552.

Paragraph a. disallows payment of TDY per diem expenses when an employee stays within the limits of his permanent duty station or in the vicinity of the residence from which the employee commutes daily to the permanent duty station. When Mr. Brockway traveled to Winchester, he did neither of these things. He did not stay in the vicinity of his permanent duty station because Winchester, Virginia, is approximately one hundred miles from Baltimore, Maryland, Mr. Brockway's official station. Nor did Mr. Brockway have a place of abode from which he could commute daily to his official station because his ex-wife moved the family to Texas and gave up their former residence in Berryville. In this regard, it was unreasonable of the agency to continue to point to Mr. Brockway's failure while in Afghanistan to change the information on a form as a reason for not recognizing that he no longer resided in Berryville. Upon his return to the United States, Mr. Brockway provided ample information concerning his situation.

Paragraph b. says that per diem is not payable at the new or old duty stations for TDY en route that is part of PCS travel. This paragraph does not apply because Winchester, the place of TDY, was not at Mr. Brockway's new or old duty station.

Paragraph c. disallows payment of per diem at the old PDS even if the employee had already vacated his permanent quarters at the old PDS. This paragraph does not apply because Mr. Brockway's TDY travel was not in the same location of his PDS -- the permanent quarters he vacated were in Berryville, not Baltimore.

The Board has stated:

The provisions of the JTR, however, cannot be construed in such a way as to contradict an employee's fundamental statutory entitlement to travel expenses and per diem allowance as provided for in the FTR.

Michael G. Stevens, GSBCA 16652-TRAV, 05-2 BCA ¶ 33,065, at 163,885. Mr. Brockway was sent on TDY to a place where he neither worked nor lived. To interpret the JTR in such a way as to deny him reimbursement for a hotel room and an automobile that had been specifically authorized in his travel orders was unreasonable. The agency is directed to pay Mr. Brockway's claim.

ROBERT W. PARKER
Board Judge