

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

April 30, 2003

GSBCA 15948-TRAV

In the Matter of LENA E. HAGEDORN

Lena E. Hagedorn, FPO Area Europe, Claimant.

Arthur C. Buck, III, Staff Director, Office of Civilian Human Resources, Department of the Navy, Washington, DC, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

Lena E. Hagedorn became pregnant while employed by the Department of the Navy at the United States Naval Station in Guantanamo Bay, Cuba. In the spring of 2000, her pregnancy developed complications, and her Navy physicians recommended that she be transferred promptly to a location where a qualified hospital and social support were present. She asked to be sent to the Republic of Panama, where her family was located. Her commander, convinced that appropriate care for Ms. Hagedorn was present in Panama, asked us whether the Navy could pay for the expenses she might incur in traveling to and from that country to receive the care. After reviewing the relevant provisions of the Department of Defense's Joint Travel Regulations (JTR) -- those dealing with health care travel and transportation allowances for employees who are assigned to permanent duty stations outside the United States -- we concluded that the agency could indeed pay for these expenses, provided that the Secretary of the Navy or his designated representative determined that the Guantanamo station's medical facilities were not able to accommodate Ms. Hagedorn's needs. Lena A. Hagedorn, GSBCA 15841-TRAV, 02-2 BCA ¶ 31,899.

The Director of Labor and Employee Relations at the Navy's Office of Civilian Human Resources, who is apparently the Secretary's designated representative, refused to consider making the requisite determination. He deemed the matter moot because Ms. Hagedorn was eligible for environmental and morale leave (EML), and could have made herself eligible for renewal agreement travel (by agreeing to stay at the post for another tour of duty), at the time she needed to depart Guantanamo Bay. The director believed that the JTR precluded giving an employee a health care travel and transportation allowance if she was eligible for such benefits.

Ms. Hagedorn left Guantanamo Bay, received appropriate medical care and support, and in August 2002, returned to her assignment in Cuba. With her commander's strong endorsement, she has asked us to review the agency's decision. We find that the Navy's action was based on an incorrect reading of the applicable JTR provision and was therefore improper.

The provision on which the Director of Labor and Employee Relations relies is JTR C6600.C.1.a (May 1, 2002), which states:

Medical care that qualifies [for a health care travel and transportation allowance] is treatment that must be undertaken before the next renewal [agreement] or EML travel and which, if delayed, can reasonably be expected to result in a worsening of the condition. Included are specialized examinations, special inoculations, obstetrical care, and hospitalization.

We can be certain that Ms. Hagedorn had to undertake treatment away from Guantanamo Bay before her next renewal agreement travel. Renewal agreement travel is an allowance for returning home between tours of duty outside the continental United States (OCONUS), JTR C4150, and by not having agreed to serve another tour OCONUS, Ms. Hagedorn was not eligible for this benefit at the time she required special treatment.

The fact that Ms. Hagedorn was eligible for EML at the time she required special medical care does not make her ineligible for a health care travel and transportation allowance, either. EML is "[l]eave granted in conjunction with an environmental and morale leave program established at an overseas installation where adverse environmental conditions require special arrangements for leave in more desirable places at periodic intervals." Department of Defense Directive 1327.5, ¶ E2.1.14 (Sept. 10, 1997).¹ EML programs provide space-available air transportation to destinations where employees may take ordinary leave. *Id.* ¶ 6.19; *see also* COMNAVBASEGTMOINST 4650.8, ch. 3, ¶ 1. When Ms. Hagedorn's pregnancy became complicated, she needed specialized obstetrical care immediately, well before the next time that she might feel well enough to take ordinary leave.

It is instructive that the JTR make particular mention of obstetrical care as an appropriate use of the health care travel and transportation allowance. JTR C6602.B.2, C6603.B.5. These provisions recognize that such care is necessary for appropriate patients for several weeks both before and after the expected delivery date, and they do not condition the use of the allowance for that care on an individual's eligibility for EML.

It is also important, when considering regulations for travel by Defense Department employees and their families located outside the United States, to consider the State

¹Department of Defense Directive 1327.5 addresses leave and liberty for uniformed members of the Armed Forces. DoD Dir. 1327.5 ¶ 2. This directive was made applicable to the department's civilian employees by an amendment to the JTR which was effective on November 2, 2002. JTR C6700.A (Feb. 1, 2003). Prior to that date, EML was available to civilian employees at the Guantanamo Bay Naval Station under local policy. COMNAVBASEGTMOINST 4650.8, ch. 3 (June 21, 1994).

Department's rules for travel by its own overseas employees and their families. This is because the Secretary of Defense's authority to pay for travel and related expenses for overseas personnel is "for purposes and in amounts that are comparable to the purposes for which, and the amounts in which, travel and related expenses are paid by the Secretary of State." 10 U.S.C. § 1599b(b) (2000). The State Department may pay the travel and related expenses of overseas Foreign Service officers and their families for both obtaining necessary medical care in an appropriate facility, and for rest and recuperation travel. 22 U.S.C. § 4081(5), (6). The State Department regulations linking these purposes of travel provide that while medical travel "should be scheduled to coincide with other non-medical travel in order to avoid the necessity of separate medical . . . travel," medical travel may be authorized for "treatment which cannot be postponed until the individual's next scheduled travel (e.g., . . . rest and recuperation . . .)." 3 FAM [Foreign Affairs Manual] 3711.b (Oct. 13, 2000) (emphasis added). The Defense Department's regulations can be faithful to the statutory authority under which they are issued only if they may be read as consistent with the State Department's very reasonable rules. We think those regulations, properly construed, meet this test.

Because the Secretary of the Navy's apparent designee has misconstrued the JTR provision on which he relies, he has given an invalid reason for his failure to determine whether, in the spring of 2002, the medical facilities at the Guantanamo Bay Naval Station were able to accommodate Ms. Hagedorn's needs for specialized obstetrical treatment and associated social support. He must make that determination now. If the determination is in the affirmative, the Navy must pay to Ms. Hagedorn an appropriate health care travel and transportation allowance for her trip to Panama for necessary medical care.

STEPHEN M. DANIELS
Board Judge