

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 14, 2003

GSBCA 16144-TRAV

In the Matter of DANIEL A. CRITTENDEN

Daniel A. Crittenden, Albuquerque, NM, Claimant.

Linda H. Stanton, Acting Director, Fiscal and Accounting Services, Forest Service, Albuquerque, NM, appearing for Department of Agriculture.

NEILL, Board Judge.

Claimant, Mr. Daniel A. Crittenden, is a member of the United States Forest Service. He has asked us to review his agency's denial of a claim he submitted for lodging expenses incurred under extraordinary circumstances in the area of his permanent duty station (PDS). For the reasons stated below, we grant Mr. Crittenden's claim.

Background

Mr. Crittenden is the air support supervisor of one of the Forest Service's type 1 incident management teams. The type 1 teams handle the most complex and dangerous of the Service's fire assignments. Mr. Crittenden's PDS is in Albuquerque, New Mexico. His residence is sixty-two miles away in Santa Fe, New Mexico.

On June 4, 2002, because of the severity of the fire season in the Forest Service's southwestern region, Mr. Crittenden's team was ordered to stage at Phoenix, Arizona, in order to be able to respond rapidly to any assignment. Two days later, on June 6, the State of New Mexico requested the Forest Service's regional coordination center to send a type 1 incident management team to fight the Ponil fire in Cimarron, New Mexico. Later in the same day, the regional communication center decided to send Mr. Crittenden's team in response to the state's request. By mid-afternoon of the same day, the team was en route from Phoenix to Cimarron, a trip of approximately 470 miles by automobile. The dispatcher from the communication center directed the team to remain overnight in Albuquerque, at the Crown Plaza Hotel, where rooms had been reserved for them.

The Incident Commander for Mr. Crittenden's team writes that the team members, all of whom had started work on June 6 at 7 a.m., arrived at the hotel in Albuquerque at

approximately 12:30 a.m. on June 7. They were directed to assemble in the lobby later that morning for departure at 9:30 a.m.

Mr. Crittenden subsequently submitted a voucher requesting reimbursement for the cost of his lodging at Albuquerque for the night of June 6/7. The agency has denied the claim; it contends that this Board has pointed out on numerous occasions that there is no legal authority for paying an expense for lodging when it is incurred by the employee in the area of his or her official station. Mr. Crittenden asks that we review this ruling.

Discussion

It is well established that lodging and meal expenses may not be reimbursed when an employee incurs these expenses at the official duty station despite adverse weather or unusual work conditions. Ronald Majtyka, GSBCA 16120-TRAV (July 9, 2003); Jerry B. Dulworth, GSBCA 16035-TRAV, et al., 03-2 BCA ¶ 32,312; Leo McManus, GSBCA 15549-TRAV, 01-2 BCA ¶ 31,507; Ray L. Siemons, GSBCA 15325-TRAV, 01-1 BCA ¶ 31,178 (2000); Ollice C. Holden, GSBCA 15175-TRAV, 00-1 BCA ¶ 30,815; Murray Lumpkin, GSBCA 14513-TRAV, 98-2 BCA ¶ 30,042. The agency correctly understands that the principal objection to paying these expenses, despite the practical arguments which one might muster in support of payment, is that there currently exists no statutory authority for paying them.

On the other hand, statute does provide that per diem allowances are authorized for government employees "when traveling on official business away from the employee's designated post of duty or away from the employee's home" 5 U.S.C. § 5702(a)(1) (2000). In implementing this statutory authorization, the Federal Travel Regulation (FTR) provides that per diem for these employees starts on the day they depart from their home, office, or other authorized point and ends on the day they return to their office, home, or authorized point. 41 CFR 301-11.9 (2002) (FTR 301-11.9). The determining factor for this entitlement, therefore, is not whether the employee is in the vicinity of his or her PDS or residence, but rather, whether the individual is or is not in travel status -- which normally begins or ends with the individual's departure from or return to his or her PDS, home, or other authorized point.

A person traveling from one temporary duty (TDY) point to another normally remains in travel status and, therefore, is entitled to per diem until he or she arrives at the terminus of the authorized travel. The question posed in this case is whether an employee traveling from one TDY location to another interrupts that status if the routing for that travel happens to pass near the vicinity of the employee's PDS or home.

The General Accounting Office, our predecessor in deciding travel claims, decided in a case similar to this that a stopover in the vicinity of the employee's PDS or home did not necessarily interrupt the employee's travel status for purposes of per diem allowance. Comp. Gen. Dec. B-130522 (Feb. 20, 1957). In reaching this conclusion, GAO carefully examined whether the employee's temporary return to the area of his or her PDS or home was originally contemplated or attributable to circumstances within the employee's control. Where the stopover was not part of the employee's original itinerary and due to circumstances beyond the employee's control, the travel status was deemed to be uninterrupted.

We find GAO's approach to cases of this type to be reasonable and are prepared to follow it provided two additional conditions are met. First, the employee must not actually visit his or her duty station. Second, if the brief stay in the vicinity of the duty station involves an overnight stay, it must be impracticable for the employee to spend that night at home.

In Mr. Crittenden's case, we find that the circumstances support a conclusion that his travel status was uninterrupted by his brief stay in Albuquerque on the night of June 6/7. The circumstances are these. On leaving Albuquerque in early June for Phoenix, Mr. Crittenden had no apparent plans to return to Albuquerque in the near future. Rather, his expectation was that he would travel as a firefighter from Phoenix to various other locations as assigned.

The decision to pass through Albuquerque en route from Phoenix to Cimarron was not made by Mr. Crittenden but by the regional coordination center. The type 1 incident management team had been dispatched to Cimarron by the regional communication center with instructions to remain overnight in Albuquerque. At the time Mr. Crittenden passed through Albuquerque, Cimarron, not Albuquerque, was the intended terminus of his travel.

A particularly significant factor in this case is the distance of Mr. Crittenden's home from Albuquerque. Indeed, had his home been closer to Albuquerque, our conclusion here might be different. Since the tragic death of four firefighters in the Thirty-mile fire in the Okanogan National Forest in Washington State in the summer of 2001, the Forest Service has striven with renewed effort to enhance firefighter safety and training. Materials submitted by claimant demonstrate that one of the many actions undertaken by the Service has been to direct incident commanders to manage firefighters' fatigue and ensure that they comply with the work/rest guidelines of one hour of rest for every two hours worked. Mr. Crittenden's commander has advised us that, if the claimant had attempted to lodge at his home in Santa Fe on the night of June 6/7 rather than at the hotel in Albuquerque, he would have been in violation of these work/rest guidelines. We agree. On arrival at Albuquerque, early on the morning of June 7, the team had been at work since 7 a.m. the morning before. After a rest of approximately nine hours, they were scheduled to resume their travel to Cimarron. Had claimant traveled the 124 miles to Santa Fe and back within that nine-hour period established by his incident commander for the team's repose, he would most certainly have been in violation of the agency's work/rest guidelines for firefighters. Even a one-way trip to Santa Fe with arrangements for the team to pick up claimant somewhere en route to Cimarron would have interfered with the requisite nine-hour period of rest. In addition, the agency advises us that, although it is not mandatory that the members of an incident command team remain together, it is generally an accepted practice that they do.¹

¹ In its report to us, the agency states that Mr. Crittenden could have stayed overnight at the Forest Service's mobilization center in Albuquerque, which is used for staging, facilitating transportation, and providing meals for firefighters mobilized for fire assignments. Alternatively, the agency states that Mr. Crittenden could have requested a driver to transport him to his home in Santa Fe. We find neither explanation persuasive. It was the Service which chose the lodging for Mr. Crittenden's team. If adequate agency facilities did in fact exist elsewhere in the city, we find it puzzling that they were not utilized for claimant and other members of his team. As for someone else driving claimant to his

In short, we find that Mr. Crittenden's presence in Albuquerque for the first nine hours of June 7 was not intended by him or originally planned by his agency. At the time, he was clearly en route from temporary duty away from his official station to other temporary duty likewise away from his PDS. His association with Albuquerque, while en route from Phoenix to Cimarron, was tangential at most. He did not pass through Albuquerque for purposes of returning to or visiting his PDS. Rather, the routing of his travel to Cimarron was dictated by the regional coordination center. Furthermore, the agency's work/rest guidelines for firefighters did not make travel to claimant's residence in Santa Fe practicable. Given the totality of the facts in this case, we find that Mr. Crittenden's travel status was not interrupted by his brief stopover in Albuquerque. Accordingly, we find that the claimant's right to per diem was not compromised by his being routed through the city by his agency while en route from the Service's staging point at Phoenix to the site of the Pomil fire at Cimarron.

Finally, we caution claimants and agencies alike that circumstances such as those examined here, which we find justify a conclusion that an employee's travel status was uninterrupted by a brief stay in the vicinity of his PDS, still cannot serve as justification for paying the subsistence expenses of employees in or near their PDS or homes who are not in transit from one TDY point to another. The decisions cited above on claims of that nature remain unchanged.

Decision

Mr. Crittenden's claim, therefore, if otherwise acceptable, should be paid.

EDWIN B. NEILL
Board Judge

home in Santa Fe, we are not convinced that the "rest" envisioned in the agency's work/rest guidelines necessarily includes sleeping fitfully in a vehicle being driven by another.