

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

August 18, 2003

GSBCA 16192-TRAV

In the Matter of PHILLIP V. OTTO

Phillip V. Otto, Parkston, MD, Claimant.

Dennis Czulewicz, Director, Division of Accounting Operations, Centers for Medicare and Medicaid Services, Department of Health and Human Services, Baltimore, MD, appearing for Department of Health and Human Services.

DANIELS, Board Judge (Chairman).

When an employee who is traveling on official business extends his stay for personal reasons, any additional costs of the trip resulting from the extended stay are the responsibility of the employee.

Background

The Department of Health and Human Services' Centers for Medicare and Medicaid Services sent Phillip V. Otto from his permanent duty station in Baltimore to a conference in New Orleans in February 2003. The conference ended on a Thursday at mid-day. Rather than flying back to Baltimore that afternoon, Mr. Otto elected to remain in New Orleans (on annual leave on Thursday afternoon and Friday) and fly home on Sunday.

That Sunday, however, a heavy snowstorm blanketed much of the Northeast, closing the airport in Baltimore. Mr. Otto was unable to get a flight in the general direction of Baltimore until Tuesday, when he accepted a route from New Orleans through St. Louis to Richmond, Virginia. He drove from Richmond to Baltimore in a car rented by a co-worker, arriving home in the wee hours of Wednesday morning.

While marooned in New Orleans, Mr. Otto slept each night in a hotel. He seeks reimbursement of the cost of the hotel room on Saturday, Sunday, and Monday nights, as well as a per diem allowance covering the cost of his meals and incidental expenses for Saturday, Sunday, Monday, and Tuesday, plus three-fourths of that allowance for Wednesday. The agency has rejected this claim, but has paid the employee for three-fourths

of the per diem allowance for Thursday, the day he would have flown home but for his decision to remain in New Orleans on his own time.

The agency notes that the cost of airfare for the roundabout route that Mr. Otto actually took (\$161) was less than the cost of the planned flight from New Orleans to Baltimore (\$179). The agency originally reimbursed the employee for the cost of the planned flight and has now directed him to reimburse it for the difference in cost (\$18). Mr. Otto responds that if he had flown directly to Baltimore, his wife would have picked him up at the airport, at a round-trip cost (at official mileage rates for privately-owned vehicles) of \$30.24. He says that if the agency insists on reimbursing him for the constructive cost of a trip he did not take, he should be paid for the cost his wife would have incurred in picking him up at the airport.

Discussion

The agency bases its denial of the claim for lodging and per diem allowance on a 1966 decision of the Comptroller General, our predecessor in settling federal civilian employees' travel expense claims. The employee in that case could have flown home on the day his business trip ended. He extended his trip by taking annual leave, however, and by the time he was ready to fly home, an airline strike was under way. The employee was eventually able to get home, but arrived nearly two days later than planned. He asked his agency to pay him a per diem allowance for the additional days en route. The Comptroller General held that "his entitlement by reason of the travel was established [upon completion of his temporary duty assignment,] and he could not increase the liability of the Government to cover unanticipated additional expenses which resulted from his election to postpone his return travel in order to take annual leave." To Authorized Certifying Officer, Bureau of Mines, United States Department of the Interior, B-160,278 (Dec. 23, 1966).

Mr. Otto challenges the application of this decision as "arcane [and] badly in need of reinvention" "in a world of airline deregulation, with the use of hub cities, contract airline discount [fares] and regional affiliation." He asks the Board to evaluate his claim against "two new criteria for the modern age of a new century." The criteria are:

1. Were the unanticipated additional travel expenses the result of an Act of God or caused by something clearly beyond the control of the employee? and
2. Did the employee take all reasonable and prudent steps to return to his/her regular duty station with all due diligence (promptly)?

We agree with the agency that the cited case is remarkably like the one presented here. That case is consistent with others in standing for the proposition that when an employee who is traveling on official business deviates from the planned trip for personal reasons, the employee is liable for any additional costs which result from that change. In another decision, for example, the Comptroller General considered a claim by an employee who desired to take leave at his temporary duty location before beginning the temporary duty itself, and had to depart his home earlier than he wished due to the availability of air transportation. The Government was held not to be obligated to pay a per diem allowance

for the extra days the employee was away from home. 54 Comp. Gen. 234 (1974). Later, both the Comptroller General and this Board have ruled that where an employee delays a return home to stay with friends or family and then stays at an airport hotel the night before flying home, the cost of lodging on that last night is not reimbursable by the Government. Leo Bosner, GSBCA 15855-TRAV, 03-1 BCA ¶ 32,234; Robin M. Kime, B-257,972 (May 17, 1995).

We do not believe that any of these decisions or the principles they enunciate are, as Mr. Otto thinks, "arcane [and] badly in need of reinvention." To the contrary, they continue to make sense today. The unanticipated additional travel expenses incurred by this employee were in one sense the result of a severe snowstorm, something clearly beyond the control of the employee. If the employee had not chosen to prolong his trip to New Orleans for personal reasons, however, he would not have been in the predicament of having the trip further delayed by the storm. In other words, Mr. Otto put himself in the position in which the storm affected his travel. The fact that he acted reasonably in returning home as soon as possible, after the storm hit, does not affect the result. By the time the problem arose, Mr. Otto was traveling on his own time, not the Government's. He must bear the financial consequences.

There are two related secondary issues in this case. One is whether Mr. Otto must reimburse the Government for the difference in airfares between the route he took and the route he would have taken if he had returned home immediately after the business portion of his trip ended. The other issue is whether Mr. Otto is entitled to the cost of the trip his wife would have taken to pick him up at the airport if he had returned home when his business in New Orleans ended.

The Federal Travel Regulation (FTR) provides that if an employee travels by an indirect route or interrupts travel by a direct route, his "reimbursement will be limited to the cost of travel by a direct route or on an uninterrupted basis." 41 CFR 301-10.8 (2002). This provision entitles an employee, who travels by other than a direct route to or from a temporary duty location, to be reimbursed for the actual costs of his travel, up to the cost of travel by a direct route. Peter J. Van Deusen, GSBCA 15366-TRAV, 01-1 BCA ¶ 31,371; Michael A. Dilligan, GSBCA 13644-TRAV, 97-2 BCA ¶ 29,045; Susan Reed, GSBCA 13993-TRAV, 97-2 BCA ¶ 29,303; John P. Butt, 65 Comp. Gen. 47 (1985). The cost of Mr. Otto's travel home from New Orleans by an indirect route was \$161 in airfare. The cost of his travel home via a direct route would have been \$179 in airfare, plus whatever charges he would have incurred to get home from the Baltimore airport – an amount he says is \$30.24, assuming his wife picked him up at the airport. Because the cost of travel by the indirect route was less than the cost of travel by a direct route, the limitation does not restrict the amount of Mr. Otto's reimbursement. He should be paid for the entire cost of his travel by indirect route (\$161). Cf. Bobby L. Humphries, GSBCA 15872-TRAV, 02-2 BCA ¶ 31,998 (constructive cost as limitation on reimbursement in another circumstance – where employee drove to and from temporary duty location, rather than flying); Peter C. Thurman, GSBCA 15562-TRAV, 01-2 BCA ¶ 31,516 (same); Russell E. Yates, GSBCA 15109-TRAV, 00-1 BCA ¶ 30.785 (same).

The agency may collect from the employee the difference between the amount it has already paid him for this trip and the amount it should have paid him, \$18. The cost Mrs.

Otto would have incurred for a round-trip to the airport is of importance only in determining the constructive cost of travel via a direct route and cannot be considered a cost actually incurred for Mr. Otto's travel. The agency properly did not reimburse Mr. Otto for the amount claimed for this item.

STEPHEN M. DANIELS
Board Judge