

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

February 22, 2005

GSBCA 16580-TRAV

In the Matter of DANIEL BRADY

Daniel Brady, Brush, CO, Claimant.

Janice Hall, Fiscal Operations Supervisor, Western Area Power Administration, Lakewood, CO, appearing for Department of Energy.

PARKER, Board Judge.

The Department of Energy's Western Area Power Administration has asked the Board whether it should pay Daniel Brady's claim for lodging expenses incurred in connection with a temporary duty (TDY) assignment. We hold that the agency should pay the lodging expenses.

Background

Mr. Brady's official duty station is in Brush, Colorado. Typically, on Sunday evenings, Mr. Brady drives 110 miles from his residence in Highlands Ranch, Colorado, where his family resides, to an apartment in Brush that Mr. Brady maintains for commuting purposes. During the workweek, Mr. Brady commutes from the apartment to his office. On the last day of each workweek, Mr. Brady returns to his residence in Highlands Ranch.

Mr. Brady was sent on a TDY training assignment to Lakewood, Colorado, from Monday, November 15, to Friday, November 19, 2004. His travel orders authorized a per diem allowance. Lakewood is 102 miles from Brush but only twenty-three miles from Highlands Ranch, where Mr. Brady had spent the weekend. Mr. Brady drove from Highlands Ranch to Lakewood on Sunday, November 14, and stayed in a hotel that night, as well as the nights of Monday, November 15, Wednesday, November 17, and Thursday, November 18. He stayed at his residence in Highlands Ranch the night of Tuesday, November 16.

The agency paid Mr. Brady the constructive daily mileage costs from Highlands Ranch to Lakewood, and back, as well as the meals and incidental portion of the per diem

allowance. The agency has refused to pay the lodging portion of the per diem allowance because Lakewood, the TDY location, was located only twenty-three miles from Mr. Brady's Highlands Ranch residence. The agency believes that Mr. Brady should have driven from Highlands Ranch to Lakewood each day.

Discussion

Resolution of this matter requires that we answer two questions. First, was Mr. Brady entitled to any per diem allowance? And second, if so, was he entitled to the lodging component of the allowance? The answer to both questions is "yes."

1. Statute authorizes a per diem allowance 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 (2000). The statute is implemented by the Federal Travel Regulation (FTR), which provides in pertinent part:

When am I eligible for an allowance (per diem or actual expenses)?

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 (2003).

Because Mr. Brady incurred per diem expenses while he was in a travel status for more than twelve hours, he is entitled to a per diem allowance if he was "away from [his] official station, or other areas defined by [his] agency." Obviously, Mr. Brady performed his TDY away from his official station because Lakewood (the TDY location) is more than 100 miles away from Brush (the permanent duty station). The issue is, then, whether Mr. Brady's TDY was performed away from "other areas defined by your agency."

In this regard, Western Area Power Administration policy provides that an employee may not receive per diem in the vicinity of his or her residence:

Q. How about if the tdy is performed relatively close to my residence (and away from my official duty station). Can I get per diem if I'm working at, or near my commuting residence?

A. No, if you are working at, or near, your residence you may not receive per diem. Yes, if (1) you are working away from the vicinity of your residence and away from your official duty station, (2) you receive authorization because management determined it's in the best interests of the US Government, and (3) your official travel requires you to stay overnight.

Western Area Power Administration Travel Policy (Apr. 24, 2001). Although both the terms "residence" and "commuting residence" are used, given the specific question asked (Can I

get per diem if I'm working at or near my commuting residence?), it seems clear that the import of the policy is to prohibit a per diem allowance when a TDY assignment is in the vicinity of an employee's commuting residence. Thus, because Mr. Brady's commuting residence (the residence from which he commutes daily to work) is in Brush, the agency's policy would not prohibit Mr. Brady from receiving a per diem allowance in connection with his TDY in the vicinity of his Highlands Ranch residence.

We have also reviewed the Department of Energy's Travel Manual and have found no provision in which the agency has defined the area near a second residence from which the employee does not commute daily as a TDY location that would preclude receipt of a per diem allowance. Accordingly, because Mr. Brady's TDY in Lakewood met FTR and agency requirements for per diem eligibility, his travel orders authorizing the allowance were proper.

2. Under the lodgings-plus method of per diem, an employee is reimbursed his or her actual lodging costs, not to exceed the maximum lodging rate for the TDY location. 41 CFR 301-11.100. An agency may prescribe a reduced per diem rate only where (1) the agency can determine in advance that lodging and/or meal costs will be lower than the per diem rate and (2) the reduced rate is stated in the employee's travel orders. *Id.* 301-11.300. We are aware of no authority that would permit an agency to require an employee to stay with friends, relatives, or even at a second residence in order to lower TDY costs. In any event, Mr. Brady's travel orders did not provide for a reduced per diem.

Decision

Mr. Brady is entitled to reimbursement of his lodging costs as provided in the FTR. The agency should recalculate the amount of Mr. Brady's reimbursement by eliminating the constructive mileage allowance for hypothetical trips to and from Highlands Ranch and adding the appropriate lodging allowance.

ROBERT W. PARKER
Board Judge