

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 26, 2005

GSBCA 16652-TRAV

In the Matter of MICHAEL G. STEVENS

Michael G. Stevens, Avon Park Air Force Range, FL, Claimant.

Ronald J. Riedel, Range Support Manager, Avon Park Air Force Range, FL,
appearing for Department of the Air Force.

NEILL, Board Judge.

Mr. Michael G. Stevens is a civilian employee of the United States Air Force. He asks that we review his agency's refusal to issue him a travel authorization for a meeting he was obliged to attend approximately one hundred miles away from his permanent duty station (PDS). In the absence of this authorization, the agency finance office will not process any claim he would otherwise make for transportation costs and per diem allowance in connection with this temporary duty (TDY) travel. On review of the record, we conclude that the agency has acted contrary to statute and regulation in refusing to issue the necessary travel authorization.

Background

Claimant's PDS is at Avon Park Air Force Range (AFR), Florida. His family residence, however, is located near Orlando, Florida, approximately one hundred miles from Avon Park AFR. For over ten years, Mr. Stevens has commuted to and from his family residence on weekends. During the work week, he lives in the Avon Park area at a location approximately fifteen miles from his PDS.

On the evening of February 22, 2005, Mr. Stevens was required to attend a work-related meeting in the Avon Park area. The meeting did not conclude until 8:15 p.m. At 8 a.m. on the following day, February 23, he was expected to attend another official meeting near Orlando. This location was approximately twelve miles from his family residence. The meeting was to run until Friday, February 25.

In planning for the meeting near Orlando, Mr. Stevens submitted a TDY request for his commander's approval. His request sought a per diem allowance and permission to travel to the meeting from his PDS in a government owned vehicle (GOV) with another employee who was also seeking TDY approval to attend the same meeting. In his request, Mr. Stevens sought permission to take the GOV from the meeting site to his family residence each evening. It was his plan to sleep at the family residence and thus avoid any lodging costs that might otherwise be incurred during the course of the three-day meeting. Mr. Stevens also sought authorization to return from the TDY area to his PDS on Monday, February 25.

The office of the commander was uncertain whether to approve Mr. Stevens' request. Apparently, the fact that Mr. Stevens' family residence near Orlando was in close proximity to the site of the meeting raised doubts whether the request should be approved. The AFR Support Manager, therefore, sought guidance from an Air Force travel specialist.

In an initial e-mail message, the Support Manager outlined the general situation and asked what Mr. Stevens was entitled to under the Department of Defense's Joint Travel Regulations (JTR). The travel specialist replied that, pursuant to JTR C4445, Mr. Stevens could be authorized round trip TDY travel by privately owned conveyance between his residence and the TDY location but that, under JTR C4552, no per diem could be allowed. The two JTR provisions cited by the specialist and transcribed in his e-mail reply read:

C4445 ROUND-TRIP TRAVEL BETWEEN RESIDENCE AND TDY LOCATION

Round-trip TDY travel by POC [privately owned conveyance] may be authorized/approved between the residence and TDY location without requiring the employee to first report to headquarters or the regular duty place. In authorizing this travel, the AO [authorizing official] must consider mission requirements, relative expense, and practicability.

C4552 GENERAL RULES REGARDING PER DIEM

. . . .

C. No Per Diem at the PDS. Per diem cannot be allowed within the limits of the PDS . . . or at, or within the vicinity of, the place of abode (residence) from which the employee commutes daily to the official station

D. TDY at Nearby Places outside the PDS. Per diem cannot be authorized when an employee does not incur additional subsistence expenses because of a TDY assignment in the vicinity of, but outside, the PDS

On receipt of this guidance, the Support Manager sent a second e-mail message asking if the employee could be authorized mileage from Avon Park AFR to his home of record near Orlando when he begins his travel on Tuesday, February 22. The reply given was that the employee could not be authorized mileage from Avon Park to his home of record near Orlando because his TDY would not start until the next day.

In his second e-mail message to the travel specialist, the Support Manager also asked if the JTR required a reduction in reimbursable miles traveled to the TDY site by the number of miles the claimant would normally travel from his residence to his PDS. In reply, the travel specialist referred the Support Manager to JTR 4445, already cited in his first reply, and to JTR 4475. The latter provision reads:

C4475 TDY DEPARTURE FROM DEPENDENTS' RESIDENCE

The AO may permit the traveler to begin official travel from the location at which the traveler maintains the family residence if it is not the residence from which the traveler commutes daily to the work site. **Relative cost should be a consideration.** Example: Traveler's PDS is Alexandria, VA. The traveler resides in Alexandria during the workweek and commutes daily to the PDS. The traveler maintains the family residence in Norfolk, VA. The traveler may be permitted to begin and/or end official travel on TDY at Norfolk, VA.

Based on the advice received, the command informed claimant that he was not authorized the use of a GOV for his travel to the meeting near Orlando and that no orders would be issued allowing meals while on TDY or mileage to and from the TDY location. Mr. Stevens was also advised that he could submit a claim for transportation between the meeting site and his nearby family residence but that the distance of his daily commute would have to be subtracted from the distance covered. Since the former was fifteen miles

and the latter twelve miles, this meant, in effect, that Mr. Stevens had no basis for making a claim even for this short travel distance.

Any claims that Mr. Stevens has submitted since returning from the meeting near Orlando in February have been rejected on the ground that nothing can be paid in the absence of an official travel authorization. For that reason, claimant has asked that we review the agency's refusal to issue an authorization. In its report submitted for the record in this case, the agency remains convinced that, in this matter of Mr. Stevens' TDY assignment, it has acted properly and in accordance with all applicable regulations.

Discussion

The authority to provide for the transportation costs and per diem allowances of government employees on TDY assignment is based on 5 U.S.C. § 5702(a)(1) (2000). This statute provides that a government employee, when traveling on official business away from his or her designated post of duty or home, is entitled to a per diem allowance and can be reimbursed for actual and necessary expenses of the official travel. This and other related statutory provisions are implemented in chapter 301 of the Federal Travel Regulation (FTR), which deals with TDY travel allowances. 41 CFR ch. 301 (2004) (FTR ch. 301).

The FTR confirms the eligibility of a government employee for travel expenses when traveling on official government business. FTR 301-10.1. Furthermore, when the employee is performing official travel away from his or her official station or other areas defined by the employee's agency and is in travel status for more than twelve hours, the employee is also eligible for a per diem allowance covering expenses incurred. *Id.* 301-11.1. Indeed, apart from some exceptions which do not apply to the facts in this case, the per diem allowance "must" be paid to the eligible employee by the agency. *Id.* 301-11.3. The per diem entitlement begins on the day the employee leaves his or her home, office, or other authorized point and stops on the day the employee returns to his or her home, office, or other authorized point. *Id.* 301-11.9.

Mr. Stevens, as an employee of the Department of Defense (DOD), is subject not only to the FTR but also to the JTR, which supplement the FTR for DOD employees. 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.

In applying the JTR provisions cited to it by the Air Force travel specialist, the agency assumes -- as does the travel specialist -- that claimant's TDY travel did not begin until Wednesday, February 23. This is clearly incorrect. Mr. Stevens began his TDY travel to

the Orlando area on the evening of February 22. His practice was to travel to his family residence only on weekends. This trip to the Orlando area was made in the middle of the work week and obviously for no reason other than to be present the following day for the start of a three-day meeting at 8 a.m., which he was required to attend. This undoubtedly constitutes TDY travel. The fact that this travel left Mr. Stevens in the vicinity of his family residence at the start of a weekend when the meeting closed was nothing more than a fortuitous coincidence which proved to be to the agency's advantage as well as to his own in that the agency was not required to pay any lodging cost for this employee during the course of the meeting.

As the JTR provisions cited by the agency indicate, TDY travel can, on occasion, begin at some point other than in the vicinity of the PDS. That did not happen in this case, however. Mr. Stevens specifically and reasonably asked for authorization to travel from his PDS to the TDY site on Tuesday, February 22. He did not request that his TDY travel begin from his family residence near Orlando on Wednesday, February 23. The agency's decision that it should begin on that date and away from his PDS effectively deprived Mr. Stevens of his right to TDY travel expenses. An authorization should be issued promptly to support his claim for travel expenses both to and from the TDY location.

We see no reason why the belated authorization should not contain provision for the meals and incidental expenses (M&IE) portion of a per diem allowance as well. In traveling to Orlando and attending a three-day meeting, the claimant certainly meets the requirement of FTR 301-11.1 and JTR C4552-F that the employee be in travel status for at least twelve hours. In seeking initial authorization, Mr. Stevens indicated that he intended to lodge at his family residence near Orlando during the three-day meeting and thereby to save the Government the cost of lodging. In the past we have refused to reimburse employees on TDY the cost of lodging at a home owned by them in the TDY area. *Lawrence A. Mahoney*, GSBCA 15600-TRAV, 02-1 BCA ¶ 31,824. Nevertheless, we have upheld the right of employees to M&IE while on TDY travel even though they are lodged at their family residence in the TDY area. *Anthony J. Kryfka*, GSBCA 13709-TRAV, 97-2 BCA ¶ 29,147. Since this is the only portion of the allowance Mr. Stevens seeks, he is entitled to it.

The calculation of this M&IE per diem allowance should be done in accordance with JTR C4553-D2. For the first day of his TDY, February 22, Mr. Stevens would be entitled to 75% of the applicable M&IE rate. So likewise with the last day of his TDY. Those days between the first and last should be treated as full calendar days of travel.

There is not sufficient information in the record for us to determine precisely which day was the last day of Mr. Stevens' TDY. We assume that he did not return to his PDS residence at the conclusion of his meeting on Friday, February 25, but rather extended his

stay at the TDY location for his own personal convenience in order to be with his family as originally planned. When the agency prepares his belated authorization, therefore, it should enter an authorized return date which is the same as that included in the orders of any other employees from his PDS who also attended the three-day meeting. The authorization should also note that Mr. Stevens, because of personal preference, will not return, in fact, to his PDS until February 28.

Any additional expenses encountered by Mr. Stevens during his extended stay near the TDY location would, of course, be for his own account, since they were not essential to the transaction of official business. *Phillip V. Otto*, GSBCA 16192-TRAV, 04-1 BCA ¶ 32,429 (2003); *Leo Bosner*, GSBCA 15855-TRAV, 03-1 BCA ¶ 32,234. As for costs incurred in connection with Mr. Stevens' delayed return to his PDS, he is entitled to reimbursement provided these costs do not exceed the constructive costs of his return on the authorized return date. *Lisa Schwartz*, GSBCA 16669-TRAV (July 13, 2005).

Finally, with regard to Mr. Stevens' entitlement to a per diem allowance, we fail to see the relevance of the two paragraphs of JTR C4552 quoted to the agency by the Air Force travel specialist. Paragraph "C" provides that per diem cannot be allowed within the limits of the PDS or the employee's residence. The residence in question, however, is not the family residence away from the PDS but rather is described expressly in the regulation as the place of abode or residence "from which the employee commutes daily to the official station." Paragraph "D" prohibits authorization of a per diem allowance under certain circumstances when the TDY assignment is "in the vicinity of, but outside, the PDS." We fail to see the applicability of this provision in a case such as this where the TDY assignment is one hundred miles away -- hardly in the vicinity of the PDS.

Both the FTR and the JTR provide that a written or electronic travel authorization should be issued to employees before the start of travel unless an urgent or unusual situation prevents prior issuance. The purpose of the authorization is, among other things, to indicate the purpose of the travel and to provide the traveler with information regarding what expenses are to be paid. FTR 301-71.107; JTR C3050-A, -B. In this case, the agency clearly directed Mr. Stevens to travel from his PDS to the three-day meeting near Orlando without issuing the requisite travel authorization. This failure to act in accordance with regulation should be promptly rectified.

Decision

The agency should issue claimant an authorization in accordance with his original request: (1) so that he can present for review a travel voucher covering his TDY travel for

the period of February 22 thru 28 and (2) so that this voucher, if otherwise acceptable, can be paid without further delay.

EDWIN B NEILL
Board Judge