

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 13, 2005

GSBCA 16664-TRAV

In the Matter of MARGARET M. TARDIF

Margaret M. Tardif, APO Area Europe, Claimant.

Adria S. Zeldin, Assistant General Counsel, Department of Defense Education Activity, Arlington, VA, appearing for Department of Defense.

PARKER, Board Judge.

Margaret Tardif, an employee of the Department of Defense Education Activity (DoDEA) in the United Kingdom, asked, for medical reasons, to be permitted to travel to and from the United States in business-class seating. DoDEA denied her request for business-class seating, and recommended coach class bulkhead seating to accommodate her condition. Ms. Tardif has asked us to review the decision. We hold for DoDEA.

Background

Ms. Tardif has serious back pain caused by degenerative disc disease and osteoarthritis. Both are chronic, permanent conditions. Ms. Tardif was examined on at least two occasions by United States Air Force (USAF) medical personnel, and her record was reviewed by a DoDEA medical consultant. Ms. Tardif also submitted the opinion of her physical therapist.

The first examination of Ms. Tardif was performed by a USAF family practice physician in 2003. The physician completed a questionnaire and stated that when traveling, Ms. Tardif “needs leg room and movement.” To the question “Can the employee’s medical

condition be accommodated by travel in bulkhead seating?” the physician responded, “Possibly.” To the question “Is the employee medically able to tolerate seating in coach class for any period of time?” the physician responded, “Not likely, except possibly a bulk head [a]isle.”

The second examination was performed by a USAF orthopedic physician assistant in 2005. The physician assistant’s questionnaire stated, “. . . recommend as much space as possible to allow for motion exercises during flight.” To the question “Can the traveler’s condition be accommodated by travel in bulkhead seating?” the physician assistant responded, “Yes.” To the question “Is the traveler able to tolerate seating in coach class for any period of time?” the physician assistant responded, “Yes [, if] enough space to allow exercises.”

Later in 2005, a DoDEA medical consultant reviewed Ms. Tardif’s case and recommended bulkhead seating, but not business-class accommodations. In June 2005 the physician/consultant wrote a letter in support of her recommendation and cited the treating doctor’s opinion that Ms. Tardif could, or could possibly, be accommodated by bulkhead seating in coach class. The consultant stated, “It is my professional medical opinion, that premium class seating would not provide any additional medical benefit to [Ms. Tardif’s condition], above and beyond that provided by bulk head seating.”

Ms. Tardif also submitted the opinion of her local physical therapist in Suffolk, England. Her physical therapist opined that bulkhead seating was “not appropriate and patient needs more room to move when needed.”

Discussion

The Federal Travel Regulation (FTR) authorizes an agency to pay for an employee’s use of “premium class other than first-class airline accommodations” when such use “is necessary to accommodate [the employee’s] disability or special need. Disability must be substantiated in writing by a competent medical authority.” 41 CFR 301-10.124(c) (2004).

The Department of Defense (DoD) has implemented this rule in its Joint Travel Regulations (JTR). The JTR provide:

Premium-class [travel] accommodations may be authorized/approved . . . due to medical reasons only if competent medical authority certifies that sufficient justification of disability or other special medical need exists and that the medical condition necessitates (for a specific time period or on a permanent basis) the premium-class accommodations upgrade. The premium-class

authorizing/approving official must be able to determine that, at the time of travel, premium-class accommodations are/were necessary because the traveler or dependent is/was so disabled or limited by other special medical needs that other lower-cost economy accommodations (e.g., ‘bulk-head’ seating, or providing two economy seats) cannot/could not be used to meet traveler’s/dependent’s requirements.

JTR C2000-A.1.c; *see also id.* C2204-B.4.b.

It is clear from the record that Ms. Tardif has a disability (degenerative disc disease and osteoarthritis), and that the disability has been substantiated by the Government’s medical professionals. Each USAF examination and a medical consultant’s review confirmed that Ms. Tardif suffers from serious back pain. The agency has not authorized business-class seating, however, because it has determined that bulkhead seating in the coach class can accommodate Ms. Tardif’s needs.

Both the FTR and the JTR vest in the agency discretion as to granting a request for business-class seating for medical reasons; thus, we review the agency’s determination under a deferential standard: the determination should be allowed to stand unless it is arbitrary, capricious, or an abuse of discretion. *See, e.g., Linda R. Drees*, GSBCA 16480-TRAV, 04-2 BCA ¶ 32,799; *Sherwood McIntyre*, GSBCA 16345-RELO, 04-2 BCA ¶ 32,687; *William T. Orders*, GSBCA 16095-RELO, 03-2 BCA ¶ 32,389. In this case, the agency’s determination has justification in the record, and is not arbitrary, capricious, or an abuse of discretion. The claimant’s appeal must therefore be denied.

Each examination of Ms. Tardif’s condition, by a USAF family practice physician, a USAF orthopedic physician assistant, and a physician serving as DoDEA medical consultant, suggested that Ms. Tardif could tolerate a bulkhead airline seat in coach class. In 2003, the family practice physician suggested that Ms. Tardif could “possibly” be accommodated by a bulkhead seat. Much more recently, Ms. Tardif was examined by an orthopedic physician assistant, who concluded that Ms. Tardif’s condition could be accommodated in coach class. Finally, the DoDEA medical consultant reviewed Ms. Tardif’s record and concluded that there was no medical advantage to be gained from a business-class seat, over and above that gained from a bulkhead seat in coach class.

The opinion of Ms. Tardif’s physical therapist, Lisa Thynne, does support the claim; however, the extent to which Ms. Thynne can be considered to be a “competent medical authority,” as required by the FTR, is unclear. 41 CFR 301-10.124(c). Although Ms. Thynne is certainly familiar with Ms. Tardif’s case, the record does not include a resume or other information regarding Ms. Thynne’s education, training, or experience.

DoDEA relied on its medical consultant's opinion to determine that Ms. Tardif should be granted bulkhead seating accommodation but not premium class accommodation during her airline travel. DoDEA's medical consultant relied, in turn, on two previous examinations of Ms. Tardif, undertaken by USAF medical professionals. Based on our review of the record, although there is some disagreement as to the extent of accommodation required by Ms. Tardif's condition, it is clear that DoDEA had a rational basis on which to conclude that Ms. Tardif's condition does not require business-class seating and can be accommodated by bulkhead seating in coach class. Therefore, we hold that the agency's position is not arbitrary, capricious, or an abuse of discretion.

Decision

Ms. Tardif's claim is denied. DoDEA shall pay for "bulkhead seating" for Ms. Tardif's travel between the United Kingdom and the United States.

ROBERT W. PARKER
Board Judge