

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 1, 2005

GSBCA 16667-TRAV

In the Matter of GARY HOPKINS

Gary Hopkins, APO Area Europe, Claimant.

Robert Schildkraut, Assistant General Counsel, Department of Defense Education Activity, Arlington, VA, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

Gary Hopkins, an employee of the Department of Defense Education Activity (DoDEA) in Germany, is scheduled for renewal agreement travel in the near future. Mr. Hopkins asked, for medical reasons, to be permitted to travel to and from the United States in an airplane's business-class seating. DoDEA denied his request, and Mr. Hopkins has asked us to review the decision. We hold for the employee.

Background

Mr. Hopkins has severe back problems, a condition which he says began in August 1998 and is expected to be of permanent duration. He is also a very tall man; his height is six feet, eight inches.

He has presented three documents from military doctors which attest to his condition and the need for special accommodations when traveling by air.

The first document, written in September 2000, states, "It is hereby requested that Mr. Hopkins be issued Busine[s]s or First Class airline tickets whenever flying. He has a medical

condition whereby sitting in cramped quarters [without ease] of movement will readily impair his condition.”

The second document, written in June 2003, states, “I recommend that Mr. Gary Hopkins . . . travel in the business or first class section during his flights. Mr. Hopkins has [severe back problems], is 6 feet 8 inches tall, and on 50% disability.¹ His symptoms would be exacerbated by prolonged periods of sitting. Mr. Hopkins needs additional seating space in business or first class to minimize his symptoms.”

The third document consists of a completed questionnaire, dated May 12, 2005, and an accompanying memorandum, from his current military physician. In these writings, Mr. Hopkins’ doctor explains the diagnosis in detail, opines that it is permanent, and concludes that it “warrants upgrade to Business or First Class airline tickets when flying.” Noting the claimant’s height, the doctor states, “[S]itting in cramped conditions for more than 1/2 hr is very painful and medically ill-advised – he needs space and comfort.” To the question, “Can the traveler’s condition be accommodated by travel in bulkhead seating?” the doctor responded, “No[:] too confining.” To the question, “Can the traveler’s condition be accommodated by purchase of two adjoining coach seats?” the doctor responded, “No.”

DoDEA presented all of this information to a physician in Redlands, California, who is under contract to the agency. According to the website of the organization with which the doctor is affiliated (www.mcc.yourmd.com), the doctor is a specialist in internal medicine – “[t]aking care of adults and young adults in a primary care setting” – as well as occupational medicine and toxicology. Without providing any analysis, this physician stated, “Based upon the medical documentation provided . . . in my professional opinion, there was no additional medical benefit to be obtained from premium class seating over bulk head [sic] seating.” Further, “The information provided by Gary Hopkins did not demonstrate that the traveler is so handicapped, or otherwise physically impaired, that other lower-cost economy accommodations (i.e., ‘bulk head,’ seating, or providing two economy seats), cannot/could not be used to meet the traveler[’]s requirements.”

Based on the contract physician’s conclusion, DoDEA determined that bulkhead seating can meet Mr. Hopkins’ requirements and therefore denied his request for business-class seating.

¹ The Department of Veterans Affairs certified, in January 2005, that Mr. Hopkins “is rated service connected with a current disability rating of 50 percent.”

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 the traveler's/dependent's requirements.

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

It is clear from the record that DoDEA could authorize business-class seating for Mr. Hopkins, since he has both a disability (severe back problems) and a special need (accommodation of his height), and the disability has been substantiated and certified as sufficient justification by three separate military physicians. The agency has chosen not to authorize this seating, however, because its relevant official has determined that lower-cost economy accommodations – bulkhead seating – can meet the employee's requirements.

Because the FTR and the JTR both vest in the agency discretion as to granting a request for business-class seating for medical reasons, 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, we find that the agency's determination cannot survive, even under this standard.

Three of the agency's own physicians have determined that Mr. Hopkins has a disability which requires that when traveling by air, he sit in a business-class seat. The doctors note that the problems posed by the disability are compounded by Mr. Hopkins' height. The most recent letter from a military physician is from the employee's current doctor, who provided detailed information based on an examination of the patient. This doctor concluded that Mr. Hopkins' condition cannot be accommodated by travel in bulkhead seating. All of the information and opinions provided by the military physicians creates a prima facie case that Mr. Hopkins needs to use a business-class seat when he travels by air.

The agency's conclusion, on the other hand, is supported only by a memorandum from a contract physician. This doctor's opinion is based solely on information contained in the documents created by the military physicians; the contract physician has not examined Mr. Hopkins and has not even consulted with the doctors who have seen him (as the DoDEA physician in *Joy S. Mickelberry*, GSBCA 16438-TRAV, 04-2 BCA ¶ 32,797, recognized was minimally necessary to analyze an individual's medical condition). The opinion is not reasoned; it simply announces a conclusion that bulkhead seating will accommodate the employee's needs. In addition, it is not apparent that the author of the opinion has any particular qualifications to render a judgment on Mr. Hopkins' requirements; according to the doctor's website, the doctor is not an expert in back problems.

Because there is no basis on which DoDEA might rationally conclude that physicians employed by the DoD who have examined Mr. Hopkins are wrong in their evaluation that he needs a business-class seat when traveling by air, we hold that the agency's position is arbitrary and an abuse of discretion.

Decision

Mr. Hopkins' claim is granted. DoDEA shall pay for business-class seats for his renewal agreement travel between Germany and the United States.

STEPHEN M. DANIELS
Board Judge