

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 18, 2005

GSBCA 16671-TRAV

In the Matter of GEMELIA RESTUM

Gemelia Restum, Okinawa, Japan, Claimant.

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

HYATT, Board Judge.

Claimant, Gemelia Restum, is an educator employed by the Department of Defense Dependents Schools (DoDDS) in Okinawa, Japan. DoDDS is under the purview of the Department of Defense Education Activity (DoDEA). Her claim concerns the agency's denial of her request for premium class travel accommodations.

Background

In October 2004, Ms. Restum submitted a written request for advance approval of premium-class airline seating for her tour renewal agreement travel to the United States in June 2005. Ms. Restum advised that she needed more seat room and the ability to stretch her legs. The primary medical reason given to support the request was degenerative osteoarthritis in both knees, hips and the lower back. She further stated that bulkhead seating, two coach seats, and aisle seating would not provide sufficient leg room. Ms. Restum had previously received approval for business class seating on a trip to the United States taken in 2003.

To further support her request for approval of premium-class accommodations, Ms. Restum submitted letters and statements from physicians and other medical professionals who were familiar with her health condition. Claimant's doctors included members of the military serving in the Department of Orthopaedic Surgery and the Internal Medicine Clinic at the United States Naval Hospital in Okinawa. The medical reports initially furnished by Ms. Restum were written in October 2004. She provided updated reports in February 2005 to meet a requirement for more recent medical documentation.

The principal report furnished in October 2004 was authored by Lieutenant Commander Thomas J. Mezzanotte, M.D., an orthopaedic surgeon on the staff at the Naval Hospital in Okinawa. In this detailed report, Dr. Mezzanotte explained that due to severe degenerative osteoarthritis of the hips and knees, Ms. Restum would require room to physically extend her knees and hips during air travel. He further stated that:

Bulkhead is inappropriate as is other coach seating. Traveler need[s] freedom of movement, leg space, ability to stretch/exercise legs and hips, and feet must be elevated. Traveler . . . needs ample seating. Pushing, shoving, and bumping of traveler is painful.

Traveler needs airline attendant to push traveler in course of travel. Assistance for check in and luggage is also need[ed].
Traveler cannot carry more than two pounds.

The documentation generated in February 2005 was similar in nature, but less specific. Dr. Mezzanotte wrote a letter verifying that his patient's condition "shows no sign of improvement and is actually becoming progressively worse." He again stated that she would need special accommodations on the airplane, including room to extend her knees in flight, but, in this letter, did not repeat his opinion that bulkhead and coach seating would not suffice. The internal medicine specialist also diagnosed degenerative osteoarthritis of the hips and knees, with "no expected recovery" and a likely future need for joint replacement. This report added that Ms. Restum relied on a cane and electric wheelchair much of the time.

Ms. Restum's application for premium-class airline accommodations was reviewed by a medical physician retained under a consulting contract with DoDEA for the purpose of appraising requests for premium travel upgrades based upon medical disability. This physician is identified as the Medical Director for Medical & Compensation Consultants. After considering claimant's request, the DoDEA medical consultant filled out a form describing claimant's medical condition as "Degenerative arthritis of lower extremities (hips, knees). She has functional limitations: no stair climbing, no lifting over 2 lbs. and no

ambulation over 50 feet.” The consultant recommended approval of bulkhead seating or two economy class seats in lieu of premium class seating, and disapproval of claimant’s request for an attendant. The form is dated February 24, 2005. Subsequently, DoDEA approved the purchase of two adjoining coach seats for Ms. Restum’s travel.

Ms. Restum asked the Board to review this decision, submitting, in support of her request, additional medical documentation. In particular, she provided a report dated May 2005 from Dr. Mezzanotte repeating his conclusion that, for Ms. Restum’s condition, air travel using bulkhead and other coach seating is inappropriate for the reasons he articulated in October 2004, i.e., because of the need for freedom of movement, leg space, the need to elevate the feet, and the need to avoid pushing and bumping of the traveler.

The agency explains that the contract physician based her recommendation upon the record before her at the time the request was made. This included four medical statements. The gist of the medical statements was that Ms. Restum required more seat room and the ability to move and stretch her legs. Only one document specifically stated that bulkhead seating or two adjoining seats would not meet Ms. Restum’s needs. The most recently dated documents simply stated a need for more room and the ability to stretch the legs. Based on this, according to the agency, the contract physician concluded that the weight of the medical evidence justified only the purchase of two adjoining seats and recommended accordingly.

Discussion

As a general rule, Government employees are limited to coach-class accommodations when traveling at Government expense. 41 CFR 301-10.122 (2004). There are exceptions to this rule when medical needs justify upgraded seating. *Id.*; see *Margaret M. Tardif*, GSBCA 16664-TRAV (Sept. 13, 2005); *Gary Hopkins*, GSBCA 16667-TRAV, 05-2 BCA ¶ 33,026; *Joy S. Mickleberry*, GSBCA 16438-TRAV, 04-2 BCA ¶ 32,797; *Steven J. Maass*, GSBCA 16393-TRAV, 04-2 BCA ¶ 32,796. These exceptions are addressed in the Federal Travel Regulation (FTR) and are supplemented in the Joint Travel Regulations (JTR), which apply to civilian employees of the Defense Department. Under the JTR, which would apply to travel undertaken by Ms. Restum:

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.2.c.

Both the FTR and the JTR give the agency discretion to decide whether to grant a request for business-class seating for medical reasons. We thus review the agency’s decision under a deferential standard: the determination should be allowed to stand unless it is arbitrary, capricious, or an abuse of discretion. *Tardif; Hopkins; see also 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. Ms. Restum maintains that the agency’s denial of her request for business-class seating constituted an abuse of its discretion.

Counsel for DoDEA states that the consulting physician based her recommendation on all of the documentation provided by claimant at the time, including the detailed October 2004 assessment provided by Dr. Mezzanotte. It is not evident, on the face of the report generated by that physician, and the memorandum authored by the DoDEA official who limited claimant’s medical accommodation to the purchase of two adjoining coach seats, that the agency has in fact appropriately exercised its discretion in this matter. At least one military doctor unequivocally stated that bulkhead and other coach seating arrangements would not suffice to accommodate Ms. Restum’s medical disabilities. In addition to the need for extra leg room, the doctor noted a requirement to be able to elevate the feet and avoid jostling as much as possible. The DoDEA contract physician did not examine Ms. Restum, nor, apparently, did she consult with the claimant’s physicians in Okinawa. She decided, based primarily on the letters provided in February 2005, that Ms. Restum’s health conditions could be adequately accommodated with bulkhead seating or adjoining coach seats. The contract doctor did not address Dr. Mezzanotte’s October 24, 2004, recommendation, which contained a detailed description of his patient’s relevant medical disabilities and, apparently, looked only to his supplementary letter, which was provided to update his earlier report as an accommodation to the JTR requirement that the supporting medical documentation be current as of three months prior to travel. That letter, however, when read in the context of the October 2004 report, makes clear that, if anything, Ms. Restum’s medical condition had worsened so as to fully support Dr. Mezzanotte’s earlier conclusion that bulkhead and other coach seating would not adequately accommodate her disabilities. While some of the

documents in the record merely recited a need for leg room, the doctor with the most specialized credentials, and who has personally examined the patient on more than one occasion, flatly stated that bulkhead and coach seating would not serve to achieve sufficient leg room, the ability to elevate the feet, and less exposure to pushing and shoving. The less specific comments of claimant's other doctor, who recognized the degenerative nature of Ms. Restum's arthritis, but was less prescriptive in his recommendation, is not inconsistent with Dr. Mezzanotte's opinion.

On this record, the Board is not in a position to assess whether the agency's decision is arbitrary, capricious, or an abuse of discretion. To exercise its discretion in a reasoned manner, the agency must at least acknowledge Dr. Mezzanotte's recommendation and explain whether it disagrees with his assessment and, if so, why. Absent an explanation of why the contract physician disagreed with Dr. Mezzanotte's assessment, we cannot find that DoDEA's disapproval of the request for business class seating for medical reasons was a reasonable exercise of its discretion. The agency may either approve business class accommodations for Ms. Restum or offer an explanation for its disagreement with Dr. Mezzanotte, addressing why the more economical travel arrangements will adequately accommodate claimant's condition.

CATHERINE B. HYATT
Board Judge