

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 27, 2006

GSBCA 16869-TRAV

In the Matter of ANDREW J. KOHL

Andrew J. Kohl, Marysville, MI, Claimant; and Lawrence Berger, General Counsel, Federal Law Enforcement Officers Association, Glen Cove, NY, appearing for Claimant.

Jose G. Fernandez, Attorney Adviser, Transportation Security Administration, Arlington, VA, appearing for Department of Homeland Security.

HYATT, Board Judge.

Claimant, Andrew J. Kohl, an employee of the Federal Air Marshal Service, seeks reimbursement of three-quarters of a day per diem expenses for official travel performed on August 5, 2005.

Background

Mr. Kohl is a Federal Air Marshal with an official duty station located in Romulus, Michigan, near Detroit. Mr. Kohl's official duty station is located a little over three miles from the Detroit Wayne County Metropolitan Airport (DTW). On August 5, 2005, he was scheduled to fly a mission out of DTW. His mission was to accompany a flight to New York's LaGuardia Airport. At LaGuardia he was scheduled to take a return flight to Detroit.

Mr. Kohl reported to DTW at 7:15 a.m., one and one-half hours before his scheduled mission flight, pursuant to a Federal Air Marshal Service (FAMS) policy requirement. He picked up his ticket and boarding pass from the carrier. The flight to which he was officially

assigned departed DTW at 8:48 a.m. The flight arrived at LaGuardia at 10:30 a.m. Upon arrival at LaGuardia, claimant learned that his return flight had been canceled. He was scheduled on a new return flight which, subsequently, was also canceled, causing yet another delay in claimant's return to DTW. Finally, he was scheduled to depart on a flight due to depart LaGuardia at 4:50 p.m. The flight left the gate on time, but takeoff was delayed an hour on the runway due to heavy aircraft travel at the airport. The flight arrived in Detroit at 7:45 p.m., ending Mr. Kohl's mission status duty day.

Based on these events, Mr. Kohl asserts that he was on official duty in official government travel status for twelve hours and thirty minutes, that is from 7:15 a.m., when he arrived at DTW, until 7:45 p.m., when he returned to DTW. He further maintains that this entitled him to three quarters of a day's per diem for a travel day of over twelve hours in duration. He initially claimed per diem in the amount of \$38.25, which TSA paid. Subsequently, TSA determined that claimant was not entitled to per diem and required Mr. Kohl to reimburse the agency.

Discussion

As the Board recognized in *Douglas E. Hickey, et al.*, GSBCA 16571-TRAV, 05-2 BCA ¶ 33,010, in reviewing claims concerning official travel of Federal Air Marshals, we apply travel regulations promulgated by the Transportation Security Administration (TSA). The rules applicable to this claim are TSA's Financial Management (FM) Policy FM-102, "Interim Temporary Duty Travel Policy," and its implementing guideline ADM 1510, "Federal Air Marshal Service Local Travel and Temporary Travel Rules."

TSA FM-102 sets forth TSA's "financial management policy governing temporary duty for travelers performing official government business." It also contains the agency's policy governing the "payment of travel and transportation allowances." FM-102 and ADM 1510 provide that no meals and incidental expenses (MI&E) shall be allowed for domestic travel when the travel period is twelve hours or less in the same calendar day. FM-102, § 7.3. ADM 1510 defines local travel to be "authorized travel within a 50 mile radius of the physical location of the field office." ADM 1510, ¶ 3. It also provides that per diem "cannot be claimed for local travel." *Id.* ¶ 5. ADM 1510 defines temporary duty travel as "authorized travel outside of the 50 mile radius of the field office . . . [, including FAM missions originating at an airport outside of the 50 mile radius involving overnight travel or travel longer than 12 hours." "Per diem is only authorized for travel longer than 12 hours." *Id.* ¶ 1.

There is a formula set forth in ADM 1510 which is to be used for the purpose of determining travel time for per diem and TDY purposes. *Id.* ¶ 4. In pertinent part, this formula states that:

For FAM missions originating at airports within the 50 mile radius, travel begins with the departure of the FAM's scheduled outbound flight ("block time," push back from gate), and travel time ends with the arrival of the FAM's scheduled inbound flight ("block time," arrival at the gate).

Id. ¶ 5.

There is also a section in ADM 1510 entitled "FAQs [Frequently Asked Questions]". Question two, along with the response, is directly on point:

Why does the "travel time" for FAM missions originating within the 50 mile radius of the field office begin with the departure of the flight, instead of the FAM's departure from his or her residence or the field office?

Airports or others [sic] sites located within a 50 mile radius of the field office are considered within the FAM's official duty station area, and are normally covered under local travel rules. Because FAM[s] are required to work at the airport prior to departing on a mission (e.g. preflight briefing), travel time, for per diem purposes, does not begin until the flight departs the airport.

However, for missions scheduled to originate at an airport outside of the 50 mile radius of the field office, TDY rules always apply because the FAM must "travel" outside of his/her official duty station area to begin work.

Id. ¶¶ 4-6.

Mr. Kohl's claim of entitlement to three-quarters of a day's per diem is premised on his contention that his travel time should be computed based on his arrival time at the airport. He maintains that since he is required to arrive at the airport at least one and one-half hours prior to the flight's scheduled departure, it is his arrival time at the airport that should control the number of hours of travel time he may claim for the day's mission. He contends that

under the Federal Travel Regulation (FTR), he would be entitled to per diem. 41 CFR 301-11.1 (2005). He also argues that FM-102 parallels similar provisions in the FTR and states that the policy that alters the entitlements under the FTR, ADM 1510, is of questionable application because the only available copies of this guidance are unsigned.

Although Mr. Kohl considers ADM 1510 to be inapplicable, we do not find his argument to be compelling. The Board has recognized and applied this policy to a different travel issue in *Hickey*, explaining that:

These regulations were issued when the FAMS was a component of the TSA. In January 2003, TSA was transferred from the Department of Transportation to the DHS [Department of Homeland Security]. In November 2003, the Secretary of DHS issued Delegation of Authority No. 7060.2 to the TSA Administrator which separated FAMS from TSA and stated that any “regulations and policies issued before November 2, 2003 pertaining to the FAM program [shall] continue in effect until superceded, rescinded, or amended by competent authority.”

05-2 BCA at 163,595 n.2. TSA’s current Deputy Director of the Office of Financial Management, who formerly served as TSA’s Acting Chief or Chief, Financial Policies and Procedures Branch within TSA’s Office of Financial Management for the relevant periods, has also filed a statement with the Board confirming that this policy is in effect and was in effect when Mr. Kohl traveled. We accept his statement.

We recognized in *Hickey* that TSA is authorized to implement its own travel regulations independent of the FTR. When an agency has such authority, the Board will look to those regulations as the primary source for resolving a disputed travel claim involving that agency’s employees. *See, e.g., Dennis J. Fitzgerald*, GSBCA 16434-TRAV, 04-2 BCA ¶ 32,800; *John L. Corrigan*, GSBCA 16170-TRAV, 04-1 BCA ¶ 32,461 (2003).

Mr. Kohl’s basic objection is to the terms of the FAMS policy itself. He believes that TSA should count the ninety-minute period prior to the flight’s departure as travel time rather than as work time. This argument cannot prevail. TSA is not required to conform to the provisions of the FTR.¹ Although he disagrees with the policy, claimant has presented no

¹ We note, however, that the FTR and the FAMS policy are not necessarily inconsistent. The FTR simply provides that an employee in a travel status for 12 hours or more may be eligible for per diem. ADM 1510 defines the parameters of travel status for

compelling reason to declare TSA's travel policy invalid. Under the facts of this claim, in which the field duty office is only some three miles from the airport, the policy treats the ninety minutes prior to boarding as time spent working at the local duty station. Thus, that time cannot be added to the actual travel time to permit claimant to qualify for a partial per diem payment.

Decision

The claim is denied.

CATHERINE B. HYATT
Board Judge

Federal Air Marshals and spells out what is considered to be travel status. Under this policy, travel status cannot occur until the flight departs because the airport is located within a fifty mile radius of claimant's official duty station.