

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 29, 2006

GSBCA 16975-TRAV, 16988-TRAV

In the Matter of NEIL I. MESSER

Neil I. Messer, Mesa, AZ, Claimant.

Kathryn P. Lohman, Division of Fiscal Services, Bureau of Indian Affairs, Reston, VA, appearing for Department of the Interior.

BORWICK, Board Judge.

Claimant, Neil I. Messer, went on an extended temporary duty (TDY) trip for his agency, the Department of the Interior, through the Bureau of Indian Affairs. Claimant contests the agency's denial of reimbursement vouchers for meals and incidental expenses (M&IE) and privately owned vehicle (POV) mileage during claimant's TDY. We grant the claims, submitted in two separate cases before the Board. We conclude that the agency misapplied the provisions of the Federal Travel Regulation (FTR) and the agency's implementing provisions. In so doing, the agency violated statute. We return the claims to the agency for calculation of the proper amounts due.

Background

Claimant owns a house in Mesa, Arizona, but his permanent duty station (PDS) is the Colorado River Agency in Parker, Arizona, which, according to Mapquest data supplied by the agency, is 167 miles distant from Mesa. During the relevant time frame, claimant did not commute daily from Mesa to Parker. While working at his permanent duty station (PDS) in Parker, claimant resided in a recreational vehicle, although in March 2006 he moved temporarily into a Government-furnished apartment. Occasionally, claimant returned to his home in Mesa on weekends.

On June 28, 2006, the agency assigned claimant to a 120 day TDY detail commencing July 8, 2006, from his PDS to the San Carlos Irrigation Project (SCIP) near Coolidge, Arizona. The agency authorized claimant travel by POV at \$.445 per mile, reimbursement of lodging and per diem allowance in accordance with the FTR, and reimbursement of miscellaneous and other expenses relating to and necessary for assigned duties. The authorization recognized that claimant was to travel from his "residence" at Parker, Arizona, or his official station. On August 8, 2006, the agency issued claimant an amended travel authorization reducing claimant's lodging and per diem allowance because his authorized travel period exceeded thirty days.

To fulfill the TDY assignment, claimant vacated the apartment in Parker and drove his recreational vehicle to his house in Mesa. According to Mapquest data submitted by the agency, the SCIP is about forty miles from claimant's home in Mesa; the agency's western regional office is seventeen miles from claimant's home in Mesa; and the agency's western regional office is about fifty-six miles from the SCIP.

Claimant's TDY ended on September 30, 2006. Claimant, however, submitted partial reimbursement vouchers to the agency during his TDY. Claimant submitted voucher one for the period July 9 through July 31, 2006, for \$1005.43, and voucher two for August 1 through September 8, 2006, for \$1913.48. The amounts claimed were for M&IE and for POV mileage between claimant's residence, the SCIP, and the agency's western regional office.

The agency disallowed claimant M&IE and POV mileage between claimant's home and the SCIP. In e-mail messages, the agency explained to claimant that under the FTR and agency policy manuals, employees were not entitled to per diem if a TDY site was within fifty miles of a PDS or an employee's residence or home from which an employee commutes daily to the official station, or when the length of a trip is twelve hours or less. The agency considered claimant to be commuting from his "home of record" in Mesa, Arizona, to the SCIP, a commute of less than fifty miles; thus, the agency determined that claimant was not entitled to per diem or mileage. The agency did grant claimant small amounts for mileage driven between the SCIP and the agency's western regional office. The agency allowed claimant reimbursement of \$41.38 on voucher one and reimbursement of \$153.52 on voucher two. Claimant filed a claim at the Board disputing the disallowance, which was docketed as GSBCA 16975-TRAV.

On October 1, 2006, claimant submitted voucher three for \$1004. The agency denied reimbursement of that voucher, telling claimant that:

Per FTR you were disallowed mileage and per diem to residence being with [in] [fifty] miles of temporary duty station and mileage being claimed is your normal commuting distance from home to office.

Claimant disputed that disallowance in a claim before the Board docketed as GSBCA 16988-TRAV. In submissions to the Board, the agency justifies its disallowance because it considers claimant to be commuting between his TDY station and home of record.

Discussion

Statute entitles employees to a per diem allowance in accordance with regulations issued by the Administrator of General Services “when traveling on official business away from the employee’s designated post of duty.” 5 U.S.C. § 5702(a)(1) (2000). The implementing FTR provides for per diem reimbursement when the employee is performing official travel “away from your official station, or other areas defined by your agency.” 41 CFR 301-11.1 (2005). The FTR defines the term “official station” to mean “the location of the employee’s . . . permanent work assignment.” The geographic limit of the official station is either the corporate limits of the city or town where the employee is stationed, or if the employee is not in an incorporated city or town, the reservation, station, or established area having definite boundaries where the employee is stationed. 41 CFR 300-3.1.

The FTR also requires agencies to establish policies and procedures if the agency chooses to “define a radius broader than the official station in which per diem or actual expense reimbursement will not be authorized.” 41 CFR 301-70.200. Here, the agency has promulgated implementing regulations establishing such a radius. Those regulations provide that an employee will not receive per diem if the employee’s TDY site is “within 50 miles of [the employee’s] duty station or [the employee’s] residence,” absent severe conditions not present here. 347 DM 301-11 Implementing Instructions § 301-11.1. The agency’s Bureau of Indian Affairs Travel Handbook provides that per diem is not payable when the TDY station is within fifty miles of the employee’s PDS or within fifty miles of the “place of abode (home)” from which the employee “commutes daily” to the official station.¹ Reading the two provisions together, per diem is not payable when the residence or place of abode from which the employee commutes daily is within fifty miles of the TDY site.

¹ The daily commute aspect of the definition is consistent with the FTR’s definition of a qualifying residence for reimbursement of real estate transaction expenses during a permanent change of station. For that purpose, the FTR defines a residence as the one residence from which an employee regularly commutes on a daily basis. 41 CFR 302-11.100.

In considering claimant's vouchers, the agency denied reimbursement because it determined that claimant's TDY locations were within fifty miles of claimant's residence at Mesa, Arizona. The agency also denied some of the mileage requested because the mileage was generated by trips of less than twelve hours from claimant's residence at Mesa.

The agency ignored the fact that the travel authorization acknowledged that claimant's residence from which he commuted daily was not at Mesa, but at Parker. In fact, claimant commuted daily to his PDS from his recreational vehicle or his apartment at Parker, not from his house at Mesa, 167 miles distant. Claimant returned to his residence at Mesa on weekends, if at all. Thus, the agency could not deprive claimant of allowable mileage and per diem allowance during claimant's TDY at the SCIP near Coolidge. In short, when claimant was in Mesa, during his TDY, he was "traveling on official business away from [his] designated post of duty" -- the Colorado River Agency in Parker -- within the meaning of 5 U.S.C. § 5702(a)(1). He is therefore entitled to reimbursement of all allowable mileage and the M&IE portion of the per diem allowance for the length of his trip.

Our conclusion is consistent with those cases holding that when an employee travels on TDY and stays in a house the employee owns at the TDY location, the employee is entitled to at least the M&IE portion of the per diem allowance. *Donald C. Smaltz*, GSBCA 14328-TRAV, 97-2 BCA ¶ 29,311; *Dimitri & Eugenia Arensburger*, B-257926.2 (Oct. 2, 1996). The matters are returned to the agency for calculation of the amounts due in light of this opinion.

ANTHONY S. BORWICK
Board Judge