



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 28, 2007

CBCA 471-TRAV

In the Matter of ROBERT O. JACOB

Robert O. Jacob, Lusby, MD, Claimant.

Judy A. Hughes, Travel Management and Procedures Office, Defense Finance and Accounting Service, Columbus Center, Columbus, OH, appearing for Department of Defense.

HYATT, Board Judge.

Claimant, Robert O. Jacob, has asked us to reconsider our decision, *Robert O. Jacob*, CBCA 471-TRAV, 07-1 BCA ¶ 33,530, denying his claim for travel expenses incurred as a result of his departure for official travel from a location other than his official duty station. Although we deny the request, the arguments made by claimant in support of his request merit discussion.

Mr. Jacob, a civilian employee of the Naval Air Systems Command, had been scheduled to travel from his permanent duty station in Patuxent River, Maryland, to Cordova, Alaska, to support missile tracking tests. Shortly before his scheduled departure for official business, he traveled to Florida because of a death in the family. To fulfill his family obligations while still accommodating the need for his presence at the tests to be performed in Alaska, Mr. Jacob obtained his supervisor's authorization to depart for Alaska from Jacksonville, Florida. He states that given the schedule for the funeral it would not have been feasible to return to Maryland in time to leave from there for Alaska. By flying out of Jacksonville, he avoided the need to postpone the planned official travel. He traveled with the expectation, based on information provided by the agency, that the cost of traveling to

Alaska from Jacksonville, rather than from Maryland, would be reimbursable, since he had received authorization to amend his plans.

The Board's decision held that under the applicable regulations, the Federal Travel Regulation (FTR) and the Joint Travel Regulations (JTR), the agency could not reimburse Mr. Jacob for the added airfare incurred by his departure from Jacksonville rather than from Maryland. We stated: "Travel approving officials do not possess the authority to authorize reimbursement of travel that is not the direct, usually traveled route from the employee's PDS to the TDY location and back, regardless of how compelling the personal circumstances of the employee may be." 07-1 BCA at 166,111.

Claimant seeks reconsideration of our decision on the basis of information and other governmental regulations that we did not directly consider in reviewing his claim. Specifically, Mr. Jacob emphasizes that he was granted "leave for bereavement," which is a "sick leave" term. He argues that the use of this type of leave is beyond the control of both the employee and the agency. Mr. Jacob reasons that we should have taken into account the distinctions between the types of leave -- annual and sick -- that are used by an employee who needs to travel on official business from or to a location other than the PDS. He notes that the cases cited by the Board generally involved instances where the employee was either taking annual leave for personal reasons, such as a vacation, or wanted to begin or end travel from a residence not at the PDS, again for personal convenience. Mr. Jacob believes that his situation is different, since he had no control over these circumstances, and took sick leave for bereavement, as authorized under regulations promulgated by the Office of Personnel Management (OPM), and as approved by his supervisor. In addition, he points out that the scheduling of the test event was under the control of the Missile Defense Agency. This limited the scheduling options available to his agency, which was only providing support.

The JTR provisions that claimant relies on are C2000-C (providing simply that "travel other than by a usually traveled route must be justified") and C4564. Mr. Jacob acknowledges that C4564, which addresses various situations in which an employee's leave is cancelled or interrupted, does not generally authorize reimbursement of expenses attributable to travel undertaken to a TDY location from a leave location, unless the requirement for TDY travel arose after the employee departed on leave. Mr. Jacob suggests that JTR C4564-E, which allows for payment of an employee's expenses when, after departure on authorized leave, and due to unforeseen circumstances, it becomes necessary to cancel the employee's leave and recall the employee to duty at either the PDS or a TDY location, lends support to his position that the need to revise travel plans while taking sick leave, due to the sudden death or illness of a family member, should be construed as a circumstance that permits the agency to pay the additional costs.

We recognize that the cases cited by the Board in its decision did not involve sick, or bereavement, leave. We are not persuaded, however, that the nature of the leave used provides a basis, under the regulations as they currently exist, for an agency to authorize additional costs attributable to travel to a TDY location from other than the PDS. The travel regulations refer simply to use of leave -- there is no distinction made with respect to the type of leave used or authorized. The fact that claimant was authorized bereavement leave does not mean the leave was not taken for “personal” reasons.

The principle that the Government cannot, even if it indirectly benefits, pay for travel expenses that are not wholly attributable to official business is illustrated by a Comptroller General decision involving an employee of the Defense Communications Agency, who was stationed near Washington, D.C., and who was performing a mission-critical assignment at a contractor’s offices in that area. *Harold A. Knapp*, B-226863 (Jan. 26, 1989). The contractor had additional offices, which were directly involved in the project as well, in Bedford, Massachusetts. Dr. Knapp learned that he needed a major operation in Boston, and thereafter would require extensive out-patient therapy in Boston. He obtained the consent of his supervisor to continue to work at his project in Boston after discharge from the hospital. Dr. Knapp underwent surgery in Boston, and, after discharge, returned home to work briefly in the Washington, DC area. After several weeks, he returned to the Boston area for about two months so that he could receive daily therapy. He received therapy at the hospital in the early morning and then reported to the offices in Bedford for a full day’s work. Dr. Knapp sought to be reimbursed his transportation and per diem expenses for this period of time. He contended that reimbursement was justified, even though his primary reason for traveling to Boston was his personal health, because he worked full time performing official business every day while there. He was performing critically necessary and time sensitive work for the agency that only he could do. The Comptroller General rejected this reasoning:

The decision by Dr. Knapp to go to Boston to seek medical treatment, although medically necessary, must be regarded as his personal choice, notwithstanding the importance of the work that Dr. Knapp accomplished with his supervisor’s knowledge, while receiving medical treatment at that location. This arrangement resulted in a benefit to the agency in that Dr. Knapp was able to continue to contribute to the . . . project while receiving medical treatment.

Accordingly, the Comptroller General concluded that Dr. Knapp’s travel to Boston could not be characterized as travel for the purpose of transacting or conducting official business within the meaning of applicable regulations.

To conclude, since Mr. Jacob was not in Jacksonville for official business purposes, the agency could not agree to pay the extra expense attributable to his travel from that location to a temporary duty location, even though the agency benefitted by preserving the testing schedule. There is no authority to reimburse an expense of this nature on the ground that the situation was beyond the employee's control. As we stated in our prior decision, it is unfortunate that neither claimant nor his travel approving officials were aware of the limits placed on reimbursement of the added expense attributable to traveling to Alaska from Jacksonville so that other options could have been considered, but this cannot change the outcome.

Decision

In view of the above, claimant's request for reconsideration is denied.

CATHERINE B. HYATT
Board Judge