



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 5, 2008

CBCA 963-TRAV

In the Matter of JIMMY D. GRAVES

Jimmy D. Graves, Walker, LA, Claimant.

Lt. Col. Kenneth A. Walters, Air Force Recruiting Service, Little Rock Air Force Base, AR, appearing for Department of the Air Force.

SHERIDAN, Board Judge.

Claimant, Jimmy D. Graves, an employee of the Department of the Air Force, Air Force Recruiting Service (AETC), seeks review of the agency's decision rejecting his claim for mileage associated with his temporary duty (TDY) assignment.

On October 9, 2007, claimant was sent on a TDY assignment from his office in Baton Rouge, Louisiana, to the AETC's annual training conference in Robinsonville, Mississippi. Before leaving, Mr. Graves was informed by the Support Flight Commander and the Chief of Finance that a government-owned vehicle (GOV) would be made available for him to drive from his office to and from the training office. GOV travel was directed and claimant was informed that he would not be reimbursed if he chose to drive his privately-owned vehicle (POV) in lieu of the government vehicle. Nevertheless, claimant elected to drive his POV to and from the training conference.

After the TDY assignment was completed, claimant submitted his travel voucher claiming, in pertinent part, \$202.35 for mileage to and from the training conference (710 miles at a per mile rate of 28.5 cents). The agency took the position that claimant was not entitled to reimbursement of the \$202.35 because prior to going on TDY Mr. Graves had only had been authorized the use of a GOV. AETC took the position that "GOV travel had been directed," and that "official notification was given to Mr. Graves that POV use was not authorized and if used, not reimbursed." The agency noted that the squadron leases automobiles to use for government travel because they are "economically cheaper" than paying for POVs and asserted:

This isn't a practice unique to us, but is common practice throughout the Air Force Recruiting Service. Whenever a GOV is available then that becomes the primary mode of transportation for any official business trip. Because a member chooses, for personal convenience, to utilize another form of transportation instead of the one provided to him, [he] should not be allowed to seek reimbursement of this expense. We already paid the monthly lease of an available vehicle and now would be paying another \$202.35 due to a failure of a squadron member to follow prescribed policy.

The AETC cites Joint Travel Regulation (JTR) C2050, Government Automobile, as its authority to restrict the claimant to the use of a GOV and for its subsequent denial of the claim.

Claimant sought reconsideration of this decision from individuals within his organization, arguing that the Federal Travel Regulation (FTR) allowed him to elect to use his POV instead of the authorized GOV. When the agency denied the claim, Mr. Graves appealed the agency's decision to the Civilian Board of Contract Appeals, where the matter was docketed on November 13, 2007, as CBCA 963-TRAV. Claimant seeks the \$202.35 in mileage fees for using a POV as an alternative to the authorized and directed GOV.

Discussion

The FTR is issued by the Administrator of General Services to implement chapter 57 of title 5, United States Code, regarding travel, transportation, and subsistence expenses of federal civilian employees. 5 U.S.C. § 5707(a) (2000). Because the FTR is promulgated under delegation from the Congress, it is a "legislative rule" which is entitled to special weight. The provisions of the FTR are binding on all agencies. *Renea A. Webb*, GSBCA 15220-TRAV, 00-1 BCA ¶ 30,889; *see also Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-44 (1984); *United States v. Grumman Aerospace Corp.*, 927 F.2d 575, 578 (Fed. Cir. 1991). The JTR are "interpretive rules" since they are typically issued without statutory imprimatur and generally used to implement and supplement the FTR for civilian Department of Defense (DOD) employees. We apply the provisions of the JTR except in cases where the JTR conflicts with the FTR. In cases where a conflict exists we typically apply the FTR because as a "legislative rule" the FTR "trumps" the JTR "interpretive rule," unless a particular JTR provision implements a statute specific to the DOD. *Michael Bilodeau*, CBCA 686-TRAV, 07-2 BCA ¶ 33,716; *Brian T. Walsh*, GSBCA 15703-TRAV, 02-1 BCA ¶ 31,818; *Ronald J. Anson*, GSBCA 15458-TRAV, 01-1 BCA ¶ 31,278; *C. Ray Taylor*, GSBCA 13688-TRAV, 97-1 BCA ¶ 28,783.

As to government travel, the FTR requires that the agency select the method of transportation that is most advantageous to the Government, considering cost and other factors. 41 CFR 301-10.4 (2007). When travel must be performed by an automobile, a Government automobile is presumed to be the most advantageous method of transportation. 41 CFR 301-10.5. If an employee does not travel by the method of transportation required by regulation or selected by the agency, any additional expenses incurred must be borne by the employee. 41 CFR 301-10.6. Notwithstanding these FTR provisions, the FTR in effect when claimant traveled also provided that an employee may elect to use a POV in lieu of an authorized GOV:

§ 301-10.310 What will I be reimbursed if I am authorized to use a Government automobile and I use a privately owned automobile instead?

(b) *Partial reimbursement when you are committed to use a Government owned automobile*-When you are committed to use a Government automobile or would not ordinarily be authorized to use a privately owned automobile due to the availability of a Government automobile, but nevertheless request to use a privately owned automobile, you will be reimbursed 12.5 cents per mile. This is the approximate cost of operating a Government automobile, fixed costs excluded. In addition, parking fees, bridge, road and tunnel fees are reimbursable.

41 CFR 301-10.310(b). Thus, where an employee chooses to not travel via the authorized GOV, and alternatively uses a POV, reimbursement will be limited to the approximate cost of operating a GOV, which pursuant to FTR regulation has been calculated to be 12.5 cents per mile.

The JTR also contain several provisions addressing GOVs and POVs. In pertinent part, section C2001 speaks to “transportation modes,” setting forth a preference for using a GOV when an automobile is required for official travel performed locally or within commuting distance of an employee’s designated post of duty. This section also provides that the employee should use the transportation mode authorized as most advantageous to the Government, and that “[a]ny additional cost resulting from use of a transportation mode other than specifically authorized/approved, or required by regulation . . . is the employee’s responsibility.” JTR C2001-A.3.d.

The provision of the JTR, regarding a claimant’s use of his POV instead of an authorized GOV, does not conflict with the FTR. However, the agency misunderstood the application of the JTR when it refused to provide any reimbursement for claimant’s POV mileage. The FTR and the JTR instruct agencies that when an automobile is required for

local TDY travel, a GOV should be authorized, personal preference or minor inconvenience notwithstanding. However, both the FTR and the JTR also provide that even though a GOV should be the authorized mode of travel, an employee may elect to use a POV, but will only be reimbursed “up to the directed transportation mode cost,” that is, “the should-cost estimate” of the agency authorized transportation.

Where a GOV was authorized but an employee elects to use a POV, the FTR has set the approximate cost of operating a GOV as 12.5 cents per mile. The claimant, who used his POV instead of the authorized and directed GOV, is entitled to recover 12.5 cents per mile. As the agency does not appear to dispute the 710 miles claimant asserts he traveled, the agency owes claimant an additional \$88.75.

PATRICIA J. SHERIDAN
Board Judge