



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 19, 2008

CBCA 945-TRAV

In the Matter of KEN S. STONER

Ken M. Stoner, Stafford, VA, Claimant.

Rodney W. Wood, Director, Financial Services Center, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

McCANN, Board Judge.

Ken M. Stoner is employed by the Department of Veterans Affairs. In April 2007, Mr. Stoner traveled on business from Washington, D.C., to Elberton, Georgia, and stayed there for two nights. On the third night he stayed in Athens, Georgia. Elberton is approximately 105 miles from Atlanta, Georgia; and Athens is approximately 73 miles from Atlanta. Mr. Stoner's orders indicated that he would be staying in Atlanta despite his assignments in the other cities. Mr. Stoner was reimbursed for his trip based upon the temporary duty (TDY) per diem rates applicable to Atlanta.

The Department of Veterans Affairs randomly selected Mr. Stoner's travel voucher for review and noticed the discrepancy between the travel destination shown on the orders and the actual locations where Mr. Stoner stayed. Since the per diem for Atlanta exceeds the per diem for both Elberton and Athens, the Department determined that Mr. Stoner had been overpaid \$91.42.

Mr. Stoner contends that he should not be required to pay back the \$91.42 because he was required to follow procedures that he advised against. He also contends that the travel regulations are being selectively enforced against him. Finally, he contends that the regulations permit or allow the agency to pay the claimed per diem rate. 41 CFR 301-11.300(d), -11.302 (2006).

It is indeed unfortunate that Mr. Stoner was provided with incorrect orders and given incorrect advice. However, bad advice provided by agency employees cannot modify provisions in the travel regulations that determine the amount of Mr. Stoner's entitlement where no independent authority for such reimbursement exists. *Joel Williams*, GSBCA 16437-RELO, 04-2 BCA ¶ 32,769; *Masood Badizadegan*, GSBCA 14393-RELO, 98-2 BCA ¶ 29,789. The Federal Travel Regulation provides that per diem reimbursement rates will be determined by the TDY location. 41 CFR 301-11.7. Accordingly, the rates used for this TDY should have been those rates applicable to Elberton and Athens instead of that for Atlanta.

The regulations cited by Mr. Stoner, 41 CFR 301-11.300(d), -11.302, as authorizing the agency to approve his actual expenses, do not apply. These regulations authorize the agency to use its discretion in appropriate circumstances to approve actual expenses. The agency has not chosen to exercise that discretion under the circumstances of this case. Also, Mr. Stoner's contention that the travel regulations are being selectively enforced against him has no merit. Mr. Stoner must return the \$91.42 overpayment to the Department of Veterans Affairs.

R. ANTHONY McCANN
Board Judge