



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 21, 2011

CBCA 2230-TRAV

In the Matter of AUDREY ROBERTS

Audrey Roberts, Newport News, VA, Claimant.

Captain Elizabeth Kadlub, Trial Attorney, United States Army Legal Services Agency, Arlington, VA, appearing for Department of the Army.

McCANN, Board Judge.

Claimant, Audrey Roberts, is an employee of the Department of the Army (DOA). She has requested that this Board review the agency's denial of her claim, which she alleges arises from temporary duty (TDY) travel.

Background

Ms. Roberts initially arrived at Fort Leavenworth, Kansas, as a contractor employee. She was a student in the DOA's Human Terrain System (HTS) program.¹ As a student, the contractor paid living and travel expenses. Upon completing her training she was immediately sent to the Combat Readiness Center and deployed to Afghanistan. During the fifteenth month of her twenty-two month deployment, HTS hired Ms. Roberts as a DOA civilian employee. It was at this point, while Ms. Roberts was still in Afghanistan, that the DOA designated Fort Leavenworth, Kansas, as her permanent duty station (PDS).

After redeploying to Afghanistan, Ms. Roberts returned to her home of record in Texas to expend accumulated leave and compensatory time before her return to Afghanistan.

¹ HTS is a part of the United States Army Training and Doctrine Command.

While on leave, HTS requested that Ms. Roberts report to Fort Leavenworth for approximately two weeks to work on updating program curricula. HTS officials informed her that she would be entitled to TDY expenses during this time. After completing her assignment, the DOA denied her request for TDY expenses because the Army had designated Fort Leavenworth, Kansas, as her PDS.

Ms. Roberts did not live or routinely work at Fort Leavenworth, Kansas. She does not even reside in the vicinity of Fort Leavenworth. Her home is in Texas. On average she spends less than four weeks a year at Fort Leavenworth. Under the HTS program, Ms. Roberts was on a perpetual deployment cycle. When she was hired, it was for the sole purpose of deploying to Afghanistan. Except for periods of leave and compensatory time, it was HTS's expectation that Ms. Roberts would be either deployed to Afghanistan or separated from the HTS program. The DOA has indicated that HTS designated Fort Leavenworth, Kansas, as her PDS for administrative convenience only.

Discussion

The DOA has denied Ms. Roberts her TDY claim on the grounds that she was performing work at her PDS when she worked on updating the curricula at Fort Leavenworth. This is so, even though Fort Leavenworth was so designated for the administrative convenience of the DOA only. In denying Ms. Roberts TDY expenses, the DOA simply argues that it has wide discretion in determining just where an employee's PDS is located, and that one cannot get TDY expenses at one's PDS.

The DOA's reasoning lacks merit. The Joint Travel Regulations (JTR), which apply to civilian employees of the Department of Defense, state: "An employee's PDS is where an employee spends, and is expected to spend, the most time." JTR C4430 A 3. Further, in *John P. DeLeo*, GSBCA 14042-TRAV, 97-2 BCA ¶ 29,156, our predecessor board in deciding these matters, the General Services Board of Contract Appeals, stated:

The General Accounting Office (GAO), which formerly resolved the travel claims of government employees, decided that whether a duty station is temporary or permanent is a question of fact and is determined by where an employee expects and is expected to spend the greater part of his time. . . . GAO was less interested in the paper trail created by the agency and the employee, and more interested in the facts establishing where the employee was expected to spend the greater part of his time performing his duties. The Department of Defense uses GAO's rationale in order to determine whether a post of duty is temporary. JTR 4455-A. GAO's approach has merit, and we will use it in this case.

Id. at 144,999 (citations omitted).

Under the facts presented in this case, Fort Leavenworth is not Ms. Roberts' PDS. Prior to the assignment in issue, she spent little or no time at Fort Leavenworth as a DOA employee, and was not expected to spend any significant time there. Accordingly, Ms. Roberts' assignment to Fort Leavenworth to update curricula was a temporary assignment and she is entitled to TDY travel expenses.²

Decision

The claim is granted.

R. ANTHONY McCANN
Board Judge

² The record does not reflect whether Ms. Roberts was paid TDY expenses while she was serving in Afghanistan and her PDS was designated as Fort Leavenworth, Kansas.