

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

July 28, 2004

GSBCA 16193-RELO

In the Matter of WAYNE R. SMITH

Wayne R. Smith, Leesburg, VA, Claimant.

Maurice D. McDonald, Chief, Fiscal Services Branch, National Business Center, Office of the Secretary, Department of the Interior, Denver, CO, appearing for Department of Interior.

HYATT, Board Judge.

Background

Claimant, Wayne R. Smith, has challenged the Department of the Interior's identification of certain travel expenses which the Government has asserted must be repaid by him. In early September 2001, Mr. Smith, then a resident of California, had been selected to serve as the Department's Deputy Assistant Secretary for Indian Affairs. His appointment was pending at the White House. Prior to the approval of his appointment, he was asked to accept a thirty-day temporary assignment with the Department, which he did. He traveled from his home near Sacramento, California, to Washington, D.C., to start the temporary assignment on September 5, 2001.

Mr. Smith's appointment was approved earlier than had been anticipated, and he was sworn in on Thursday, September 6, 2001.¹ He spent the next day looking for a place to stay, and reported to work on Monday, September 10. He was authorized to fly back to California on Friday, September 14, to make arrangements to move to Washington, D.C. Following the events of September 11, 2001, Mr. Smith was unable to leave the Washington area as planned, although he did return to California as soon as he was able thereafter.

Later in 2001, Mr. Smith had occasion to travel on official business for the Interior Department. In performing this travel, he flew to multiple locations, including Sacramento, where his former residence was located. The Department, upon reviewing his vouchers, concluded that certain of these trips were made for the purpose of conducting personal business and has required repayment of amounts that it deemed to be attributable to the conduct of personal business. Mr. Smith contests certain of the Department's determinations, contending that they are incorrect because he was in fact conducting official business in the cities in question. The Department has also billed Mr. Smith for per diem costs that

¹ Mr. Smith's initial claim included issues pertaining to his relocation benefits. Upon receiving further explanation of the application of the rules governing relocations, this portion of his claim (pertaining to travel voucher 200311) has been withdrawn.

were initially paid with respect to his stay in Washington following his swearing-in on September 6, until his return to California on September 19, 2001. Mr. Smith maintains that he should not be expected to pay for these expenses given the circumstances.

The trips in question involved travel in October, November, and December 2001. From October 5 through 10, 2001, Mr. Smith traveled to Sacramento, California. He submitted his expenses on travel voucher 200209, in the amount of \$675.41, representing the cost of his round-trip airfare. The Department disallowed the travel expenses paid in connection with this trip, stating that Mr. Smith's purpose in traveling to Sacramento was to accompany his fiancée and her family, who were not considered to be immediate family members, on the move to Washington, D.C. Mr. Smith contends, however, that he conducted official business on this trip, visiting the Department's regional office and various offices in the State of California. He further states that the former Director of the Pacific Region's Bureau of Indian Affairs is prepared to corroborate his statement that he conducted official business on this trip.

With respect to travel voucher 200653, it appears that Mr. Smith combined trips to Sacramento and Los Angeles over the period from November 10 through 13, 2001. The Department disallowed the cost of the Sacramento segment of the airfare, stating that this portion of the trip was not for the purpose of conducting official business. Mr. Smith contends that he visited the Department's regional office. It appears that the only expense in issue is the additional cost of the stop in Sacramento compared to the cost of a round-trip ticket to Los Angeles.

For travel voucher 200785, the Department disallowed the cost of a weekend trip to Sacramento that preceded official business in Spokane, Washington. Mr. Smith started his travel on Saturday, November 24, 2001, when he flew to Sacramento. The Department disallowed \$149 for the airline ticket (based on a cost comparison between the cost incurred and the cost of a direct round-trip ticket between Spokane and Washington, D.C.), the cost of a rental car in Sacramento (\$102.68), and a day of per diem in Sacramento (\$38). These costs were disallowed because the Department was of the view that no official business was transacted in Sacramento prior to proceeding to Spokane. Mr. Smith suggests in his submission that he in fact visited the Department's regional offices before proceeding to Spokane.

Travel voucher 221094 reflects that claimant traveled to Las Vegas, Nevada, and then on to Albuquerque, New Mexico. Claimant maintains the trip to Las Vegas was for the purpose of addressing the Nevada Tourism Bureau's annual meeting as a participant in a panel discussion of the impact of Indian gaming on Nevada. According to Mr. Smith, he participated in this event at the request of the Secretary of Interior and she attended the conference as well. From there he continued on to Albuquerque.

With respect to travel voucher 105718, this voucher reflected the per diem expenses incurred by Mr. Smith while he remained in Washington after being sworn in, a period of time that was extended by the events of September 11, which prevented him from returning promptly to Sacramento to complete preparations to move to the Washington, D.C., area. Mr. Smith was initially reimbursed for these expenses, but upon review the Department has sought repayment

of the expenses originally paid, reasoning that once he became an employee of the Department, there was no authority to pay Mr. Smith for per diem expenses at his permanent post of duty.

Discussion

The principal focus of claimant's request for the Board's review of the Department's determination that he should repay portions of the amounts he received under his travel vouchers relates to the agency's assertions that portions of the trips he took were purely for personal reasons. Although the Board has asked for more information about these trips and for clearer explanations of the Department's reasons for disallowing the expenses claimed, neither the agency nor claimant has elaborated significantly on its initial conclusory submission.

By statute, agencies should reimburse their employees for actual and necessary costs incurred to travel on official business. 5 U.S.C. § 5702 (2000). The Federal Travel Regulation (FTR) further states that the travel expenses that will be reimbursed are confined to those expenses that are essential to the transaction of official business. 41 CFR 301-2.2 (2001). The amount that may be reimbursed is limited to the cost of air fare procured through the contract carrier and the per diem rate for lodging and meals and incidental expenses applicable to the travel location.

When an employee travels on official business, the agency may disallow only those expenses that would not have been incurred but for the conduct of personal business while performing official travel -- any expenses that would necessarily have been incurred to perform official travel are required to be reimbursed up to authorized per diem levels. When official business is combined with personal business, the employee may not be reimbursed for per diem expenses during any period of travel when official business is not performed. There is no requirement, however, that the expenses of transportation or per diem rates be prorated or adjusted to reflect the fact that personal and official business were combined unless the overall cost exceeds that which would otherwise have been incurred had only official travel been performed. See Louis F. Schleuger, GSBGA 14954-TRAV, 00-1 BCA ¶ 30,708; John A. Park, B-227468 (Mar. 11, 1988).

The FTR requires that the employee generally have "written or electronic authorization prior to incurring any travel expense." 41 CFR 301-2.1.² In response to the Board's request for copies of the specific travel authorizations for the disputed trips, the Department provided a copy of Travel Authorization TA200085, which it terms a "blanket authorization for fiscal year 2002." This document purports to authorize travel between Washington, D.C., and Sacramento, California, for the purpose of "conduct[ing] official business for the Department of the Interior and the Federal Government" and is signed by the Assistant Secretary for Indian Affairs. A blanket authorization for travel, in and of itself, is not enough to authorize the incurrence of travel expenses, however. The regulations contemplate that each specific trip also be authorized by an appropriate agency official so as to ensure that the trip was necessary for the conduct of official business. This

² Alternatively, if prior authorization was not feasible, the agency may still reimburse the employee if the travel is subsequently approved by the appropriate official. Id.

requirement also assists agencies in controlling expenditures of federal funds and in ensuring the proper recording of financial obligations. Gene Daly, B-197386 (June 15, 1983).

The sketchy details afforded in the record prevent the Board from coming to an independent conclusion as to whether official business was both authorized and conducted by claimant in Sacramento during these trips. We can, however, offer guidance on how these issues should be resolved, depending on the actual facts that apply. The Department, through its National Business Center, seems to have adopted the position that these trips were taken solely for personal reasons; claimant asserts otherwise and states that personnel in the Department's regional office will corroborate that he did in fact conduct official business on these trips. Neither the agency nor claimant directly addresses the salient point, which is whether this travel was authorized in advance or subsequently approved by the individual or individuals charged with authorizing or approving claimant's official travel. To the extent that the trips were not authorized or approved as necessary for the conduct of official business, claimant's visits to the Department's regional offices or other government facilities would not be enough to entitle him to payment of transportation and per diem expenses. On the other hand, if claimant was in fact authorized to perform official business in Sacramento and Las Vegas³ for the trips in issue here, and did in fact do so, he may not be required to absorb the expenses of his travel to those cities. If the agency continues to dispute his assertion that official business was authorized and performed on all legs of the identified trips, it should articulate a more specific basis for its position.

As to the lodging and meal expenses incurred while Mr. Smith remained in Washington following the events of September 11, 2001, Mr. Smith makes the common sense point that he had no choice but to remain in Washington, D.C., until air travel resumed. Unfortunately, as a new employee whose permanent duty station was designated to be Washington, D.C., Mr. Smith was not eligible for temporary quarters subsistence expenses. Once he was sworn in, Mr. Smith was no longer covered by his temporary agreement, but was a permanent employee officially stationed in Washington, D.C. The statutory authority under which per diem is paid to employees who are on official travel away from their permanent posts of duty has consistently been construed to prohibit payment of per diem at the permanent post of duty, regardless of unusual circumstances that might seem to justify the expense. See Jerry B. Dulworth, GSBGA 16035-TRAV, et al., 03-2 BCA ¶ 32,312; Leo McManus, GSBGA 15549-TRAV, 01-2 BCA ¶ 31,507; Murray Lumpkin, GSBGA 14513-TRAV, 98-2 BCA ¶ 30,042; Herman T. Whitworth, GSBGA 14401-TRAV, 98-2 BCA ¶ 29,804. Admittedly, the costs that Mr. Smith incurred as a result of being sworn in were higher than they would otherwise have been because he was unable to leave Washington, D.C., as soon as he had hoped; nonetheless, there is no authority under the travel

³ For example, claimant states that the trip to Las Vegas was for the purpose of speaking at a conference and was made at the request of the Secretary of the Interior, who also attended this event. If this is correct, unless there is more to it, this trip would seem to qualify as official travel, and Mr. Smith should not be expected to reimburse the agency for the expenses associated with this portion of his trip.

statutes and regulations to compensate him for those costs. The regulations simply do not permit exceptions to accommodate even extraordinary circumstances such the attacks that occurred on September 11, 2001.

CATHERINE B. HYATT
Board Judge