

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 16, 2005

GSBCA 16702-RELO

In the Matter of WILLIAM MEYERS

William Meyers, Ballwin, MO, Claimant.

Charles Arns, Chief, Financial Operations, National Geospatial-Intelligence Agency, Arnold, MO, appearing for Department of Defense.

NEILL, Board Judge.

Claimant, Mr. William Meyers, is an employee of the National Geospatial-Intelligence Agency (NGA), an organizational component of the Department of Defense (DoD). He asks that we review a determination by his agency that his wife and four children are not entitled to per diem for a period of time they remained at The Hague in the Netherlands. One of the purposes of this visit was to obtain health care for the claimant's recently born son. For the reasons set out below, we affirm the agency's denial of Mr. Meyers' claim.

Background

In early 2002, claimant was on overseas assignment in Japan with his wife and three children. At the time, his wife was expecting the birth of their fourth child. Before birth, however, the child was diagnosed with bilateral hydronephrosis (a narrowing of the urethral tubes to the bladder). Although some consideration was given at the time to having Mrs. Meyers deliver her baby in Hawaii, it was ultimately determined that a hospital in Japan had the medical expertise to handle the case.

On May 13, 2002, Mrs. Meyers gave birth to a son. The nephrologists caring for the boy, Andrew, recommended that he be monitored periodically for any signs of infection which would indicate the need for immediate pediatric surgery. Prior to Andrew's birth, Mr.

Meyers had already received orders transferring him to Bahrain. He and his wife determined that this monitoring of Andrew's condition could be done at The Hague in the Netherlands while Mrs. Meyers, Andrew, and their three other children were visiting with her parents, who were in residence there. Mr. Meyers' orders, therefore, were amended to add his new son as a dependent and to provide for a delay in his dependents' travel while on route to Bahrain. In the meantime, a local physician in Japan, who already had the new infant under his care, provided the child's parents with a letter of introduction to any physician who might have occasion to examine young Andrew. The letter explained that, although free of infection, the child still had a mild form of bilateral hydronephrosis and should be checked each three or four months until normal.

Claimant and his family left Japan on June 25, 2002. They traveled to Bahrain via the United States, where Mr. Meyers was on leave from June 27 to July 5. From July 6 to 16 he was on a temporary duty (TDY) assignment in the United States. On July 17, Mr. Meyers flew to Amsterdam and remained with his family and in-laws until July 21, when he departed for Bahrain. Mr. Meyers' family left the United States for Amsterdam on July 7, the day Mr. Meyers began his TDY assignment. Mrs. Meyers and the four children remained with her parents at The Hague until August 18, when they left the Netherlands to join Mr. Meyers in Bahrain.

Mr. Meyers explains that, because he was required to accept a TDY assignment in the United States before going to Bahrain, the Netherlands was on the normally traveled route from Washington to Bahrain. The stay of his wife and their four children at The Hague, therefore, did not require any modification of their permanent change of station (PCS) travel route.

Mr. Meyers believes that for the period his wife and their four children were in the Netherlands, they are entitled to the meals-and-incidental-expenses portion of their per diem allowance. He makes no claim for lodging since, during that period, his wife and her children were guests in the home of Mrs. Meyers' parents.

Mr. Meyers bases his claim on provisions found in Part M of Chapter Six of the Joint Travel Regulations (JTR). Chapter Six of the JTR is entitled "Travel Under Special Circumstances." Part M of this chapter deals with employee travel for health care. The agency travel office initially denied Mr. Meyers' claim. Mr. Meyers then requested the agency office of counsel to review his claim. In its report to us, the agency states that agency counsel concluded that the claim could be paid. Nevertheless, counsel's conclusion appears to have been somewhat tentative. Contemporary documentation submitted with the agency report indicates that, although the office of counsel was favorably disposed to paying the claim, it still recommended that the matter be referred to DoD's Per Diem Committee.

Because of the involvement of agency counsel in this matter, the request for guidance eventually sent by the agency to the Per Diem Committee was referred to the Committee's own office of counsel. The Committee's counsel promptly replied that claimant's dependents were not entitled to the per diem allowance because various requirements set out in JTR C6600-A had not been met. Among these was the requirement for an authorization, through the Secretarial Process, of transportation to a designated location for appropriate medical care based upon the determination that local medical facilities are not able to accommodate the needs of an employee or dependent. The Committee counsel also noted that other determinations required for eligibility under C6600-B were lacking as well.

On being advised of the response from the Per Diem Committee, agency counsel notified the agency's office responsible for the processing of Mr. Meyers' claim that the Committee's ruling took precedence over any previously expressed opinion of the agency's own office of counsel. Agency counsel further explained that, if Mr. Meyers disagreed with the ruling from the Per Diem Committee, he should appeal to this Board.

Discussion

At the time claimant was transferred from his former post of duty in Japan to his new post of duty in Bahrain in July 2002, the text of JTR C6600 was slightly different from that appearing in the current version of the JTR. For purposes of this decision, we quote from the version of C6600 which was in effect at the time of claimant's transfer. That version reads, in part, as follows:

A. Entitlement

When a determination is made through the Secretarial Process that local medical facilities (military or civilian) at a location outside the U.S. . . . are not able to accommodate the needs of an employee or dependent, transportation to a designated location may be authorized for appropriate medical/dental care. When authorized, eligible individuals assigned at a PDS [permanent duty station] outside the U.S. are entitled to travel and transportation allowances for travel to and from a designated point incident to employees and their dependents obtaining required health care (whether or not that care is at Government expense) under the conditions and within the limitations of this part.

Paragraph "B" of the JTR C6600 is entitled "Eligibility." It calls for various determinations to be made by the order-issuing official. Among these are a determination that an employee's dependents qualify for this health care benefit, that various family

members are entitled to travel with the patient, and that the patient is either too ill or too young to travel unattended. This latter determination must be based upon the advice of a professional certifying physician.

Paragraph “C” of the same JTR provision is entitled “Required Health Care.” It reads:

Required health care is medical and dental care that the order-issuing official determines, based on the advice of an appropriate professional certifying physician, is needed by an employee or dependent located outside the U.S. where there is no adequate facility to provide suitable care.

The same paragraph goes on to state that the required health care must be undertaken before the next renewal agreement or EML (environmental and morale leave) travel and, if delayed, can reasonably be expected to result in a worsening of the condition.

Paragraph “D” of C6600 defines the “designated point” to which the patient may be transported as being the location that the order-issuing official determines is the nearest facility to the patient where suitable health care can be obtained, based on advice of the appropriate professional certifying physician.

Mr. Meyers is apparently of the opinion that amendment of his travel authorization to provide for a delay in the travel of his dependents while on route to Bahrain was the only coordination required in order to qualify for the health benefit available under JTR C6600. The regulation as it then read, and even in its modified version today, simply does not support such a conclusion.

First and foremost, as the Per Diem Committee counsel pointed out, there is no indication in claimant’s case that any authorization of travel for health care was given through the Secretarial Process. The Secretarial Process consists of action by a high-level official within DoD or by his or her designated representative. JTR vol. II, app. A, pt. I. This clearly does not equate to the travel authorization contained in an amended standard travel authorization such as that obtained by Mr. Meyers after the birth of his son, Andrew, and prior to departure from Japan. *Lena E. Hagedorn*, GSBCA 15841-TRAV, 02-2 BCA ¶ 31,899.

The record for this case does not contain anything resembling an authorization for travel for health care given through the Secretarial Process. Neither would we expect it to contain such an authorization given the facts of this case. The authorization provided for in JTR C6600 is for situations where an employee or an employee’s dependent is in urgent need of health care which is not available near the employee’s current post of duty and which

cannot be delayed until the patient is able to seek the care elsewhere in conjunction with other authorized travel.

This is not the situation confronting us here. Monitoring young Andrew's condition was possible in Japan before claimant's family departed for Bahrain. But for claimant's transfer, the health care required for Andrew was available at or near Mr. Meyers' post of duty in Japan. The attending physician made no determination that the required care was not available there. Rather, he provided Andrew's parents with a letter of introduction that would presumably ensure that Andrew would continue to receive proper care while on route to and after arrival in Bahrain. Similarly, Mr. Meyers' orders, even as amended, make no reference to a "designated point" for required health care. The parents wisely determined that Andrew could be seen while Mrs. Meyers and the children visited with her parents in the Netherlands. The amended orders, however, make no mention of the Netherlands as the designated point for required health care. They simply authorized a delay for the dependents in their PCS travel to Bahrain.

Finally, at the time Andrew's condition required monitoring, it was possible for him to receive a physician's attention in conjunction with other travel already authorized, namely claimant's authorization for PCS travel. Neither was there any need to deviate from the normal PCS route from Washington to Bahrain at greater cost to claimant since the medical attention which Andrew required was available at The Hague -- which claimant tells us was considered to be on the normal PCS route from Washington to Bahrain.

In his request for our review of the agency's denial of his claim, Mr. Meyers provides a slightly different version of what transpired when the agency office of counsel was asked to comment on his claim. He writes that on March 5, 2005, the NGA Office of General Counsel determined his eligibility under JTR C6600 and instructed the Office of Financial Management to pay his claim. As already mentioned, the agency in its report to us readily admits that the office of counsel concluded that the claim could be paid. Nevertheless, as also mentioned, agency counsel's conclusion appears to have been tentative at best.

On balance, we find the agency's version of what occurred with agency counsel more persuasive than claimant's version. For Mr. Meyers to be eligible under JTR C6600, an authorization through the Secretarial Process would have been required. No such authorization is in the record and we consider it highly unlikely that the agency office of counsel could issue such an authorization. Furthermore, even if agency counsel was empowered to issue an authorization through the Secretarial Process and did so in claimant's case, it undoubtedly would be in error since, as already explained, the circumstances in this case simply do not constitute the type of situation for which JTR C6600 even applies.

Decision

The agency has acted correctly in rejecting Mr. Meyers' claim. The claim is denied.

EDWIN B. NEILL
Board Judge