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

September 6, 2002

GSBCA 15707-TRAV

In the Matter of JOHN L. CORRIGAN

John L. Corrigan, Auburn, WA, Claimant.

Jon J. Canerday, Office of General Counsel, National Credit Union Administration, Alexandria, VA, appearing for National Credit Union Administration.

HYATT, Board Judge.

Claimant, John L. Corrigan, is employed as an examiner by the National Credit Union Administration (NCUA), in a region that includes the states of California and Washington. In early 2001, Mr. Corrigan resided in Colton, California. In April 2001, he relocated his residence to Auburn, Washington, near Seattle. The relocation was to be at his own expense. Prior to relocating, Mr. Corrigan was detailed by NCUA to Seattle and Montana for the period from March 19 to March 30, 2001. In anticipation of the move, Mr. Corrigan drove his privately owned vehicle (POV) to Seattle rather than use commercial transportation to travel to his assignment. During his detail in Seattle, he stayed with relatives rather than in commercial lodgings. When claimant completed his temporary duty, he left his car in Seattle and proceeded to Montana, returning to California from Montana via commercial transportation. He submitted a travel voucher for his actual expenses. The voucher was partially paid, but the amount that was disallowed is in dispute.

Mr. Corrigan's temporary duty assignment in Seattle was from March 19 through March 23. After completing his assignment there, he left his car in Seattle and flew to Montana for a second week of temporary duty, staying in Montana from March 26 to March 30, and returning to California via commercial transportation on March 30. The issue claimant raises concerns the proper level of reimbursement for the expenses of the first leg of his temporary duty assignment -- the cost of driving to and staying in Seattle. NCUA takes the position that the proper level of payment is determined by a comparison of the constructive cost of commercial transportation to Seattle versus the cost of driving the personal vehicle there. Mr. Corrigan maintains that under the analysis set forth in the Board's decision in Russell E. Yates, GSBCA 15109-TRAV, 00-1 BCA ¶ 30,705 (1999), reconsideration denied, 00-1 BCA ¶ 30,785, the agency should have reimbursed him using

a constructive cost comparison that included the cost of commercial lodging in Seattle, despite the fact that he stayed with relatives.

Discussion

The Federal Travel Regulation (FTR) contains several relevant provisions. Section 301-70.105 of the FTR provides that when an employee elects to use a POV to travel on official business the agency must:

> Limit reimbursement to the constructive cost of the authorized method of transportation, which is the sum of per diem and transportation expenses the employee would reasonably have incurred when traveling by the authorized method of transportation . . . .

41 CFR 301-70.105 (2000). Another pertinent provision states that when the traveling employee chooses to stay with friends or relatives the employee may be reimbursed:

> for additional costs [the host] incurs in accommodating [the employee] only if [the employee is] able to substantiate the costs and [the] agency determines them to be reasonable. [The employee] will not be reimbursed the cost of comparable conventional lodging in the area or a flat "token" amount.

41 CFR 301-11.12(c); see Javier R. Hernandez, 15338-TRAV, 00-2 BCA ¶ 31,139; Donald Mixon, GSBCA 14957-TRAV, 99-1 BCA ¶ 30,606.

In Yates, the claimant traveled from Houston, Texas, to Tampa, Florida, on official business for the National Aeronautics and Space Administration (NASA). Although NASA determined that travel by air was in the Government's best interest, claimant elected to drive his motor home instead. He resided in the motor home in lieu of staying in a local hotel. Following submission of claimant's travel voucher for actual costs incurred of nearly $1300, NASA determined the constructive cost of Mr. Yates' travel by computing the cost that the Government would have incurred if he had used commercial air transportation to travel to Tampa, which was considerably less than what it cost Mr. Yates to drive his motor home to Tampa. NASA then used the actual cost of lodging, which was the cost of parking the motor home in a campground, in calculating the constructive cost element of the comparison prescribed by regulation. Mr. Yates argued that NASA should have calculated his constructive lodging costs using the Government rate for commercial lodging in the locality of his temporary duty assignment. The Board explained that in applying the constructive cost methodology of the FTR, the following procedure should be followed by the agency:

> This regulation requires an agency, when an employee chooses to travel in his or her own vehicle rather than by the means of transportation most advantageous to the Government, to calculate the employee's travel costs in two separate ways. First the agency should determine, through the standard application of statute and regulation, the allowability of the

> various components of an employee's travel claim. For example, with regard to costs associated with the use of a privately owned vehicle, the agency should apply the mileage reimbursement and associated provisions contained in subpart D of part 301-10 of the FTR. With regard to per diem expenses, including lodging costs, the agency should apply the provisions of part 301-11 of the FTR. The agency should then total the allowable costs.
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> Second, the agency should determine the total constructive cost of the employee's travel had he or she traveled by the method of transportation deemed to be in the Government's best interest. As we noted in our earlier decision in this case, constructive costs are by their very nature not costs which are actually incurred. Although these costs, too, should be determined through application of statute and regulation, the calculation necessarily will involve assumptions. As with the employee's travel costs determined in standard fashion to be allowable, the agency should likewise calculate a total constructive cost.
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> After computing the two totals, the agency should compare them. If the total of costs determined in standard fashion to be allowable is greater than the total of the constructive costs, the agency should limit reimbursement to the latter figure. Under FTR 301-70.105, this overall total of constructive costs serves as a limitation on the amount of allowable travel costs an employee may recover when choosing to travel by POV rather than in the manner deemed to be in the Government's best interest.

Yates, 00-1 BCA at 152,027. In Yates, the Board went on to recognize that but for the fact of having driven his motor home to Tampa, the claimant would have stayed in commercial accommodations. Thus, the Board considered it would be proper to add the cost of that lodging to the constructive cost calculation. The constructive cost so calculated would then constitute the upper limit on recovery of actual costs incurred by the claimant for traveling on official duty. Id.

Applying the Yates approach here, the agency would first calculate what it actually cost the employee to travel to the detail. In this case, in computing Mr. Corrigan's travel costs associated with the Seattle leg of his detail, the agency has determined the allowable mileage and the cost of staying with relatives, which Mr. Corrigan has stated is $0. This would then be compared to the total constructive cost of Mr. Corrigan's travel had he used the method of transportation deemed to be in the Government's best interest. This is where the issue presented for our resolution arises. Mr. Corrigan argues that Yates requires the agency to include the estimated cost of commercial lodging as a component of what it "would have cost" the agency had he traveled by the means considered to be in the Government's best interest. NCUA urges that it is not required to calculate constructive costs in this manner.

Yates is distinguishable because the claimant in that case did not stay with relatives as an alternative to using commercial lodging. The agency maintains that applying the Yates approach in this case would run afoul of the FTR's express provision that an employee not be compensated for the cost of conventional lodging when staying with relatives.

Mr. Corrigan's reliance on Yates is understandable, but misplaced. As we noted in Yates, the computation of the constructive cost total to be compared to the actual cost total is based on reasonable assumptions about what costs the employee would have incurred had he or she used the travel method deemed to be in the Government's best interest. This will depend on the facts applicable to the individual travel claim. In Yates, the claimant's POV was a motor home, which served as a substitute for lodging as well as the means of transport

to the temporary duty location. In those circumstances, the Board reasoned that had the claimant not traveled by this specific type of POV to Tampa, he would presumably have stayed in commercial accommodations since the motor home would not have been available. Thus, it was appropriate to look at the cost of local commercial accommodations to evaluate what cost the Government would have incurred had the employee chosen to fly to Tampa.

Here, the claimant stayed with relatives. Presumably, he could have stayed with relatives regardless of whether he flew or drove to Seattle. There is no reason to assume that he would have stayed in commercial lodgings had he traveled by air to Seattle. The agency, therefore, was not obligated to calculate the constructive cost of travel by using the cost of hotel accommodations as an alternative to staying with relatives. As such, Mr. Corrigan's claim was properly disallowed by NCUA.

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CATHERINE B. HYATT
Board Judge.