

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

September 4, 2002

GSBCA 15872-TRAV

In the Matter of BOBBY L. HUMPHRIES

Bobby L. Humphries, Pepperell, MA, Claimant.

Peter H. Babcock, Labor and Employment Law Counsel, Headquarters 66th Air Base Wing (AFMC), Hanscom Air Force Base, MA, appearing for Department of the Air Force.

DANIELS, Board Judge (Chairman).

Bobby L. Humphries, an employee of the Department of the Air Force who works at Hanscom Air Force Base (AFB), Massachusetts, was directed to attend a Defense Acquisition University course in Hampton, Virginia, in April 2002. Mr. Humphries drove his own vehicle to and from Virginia, and he asked to be paid for the mileage he traveled and the tolls he paid on the trip. The Air Force paid only the travel costs it believes he would have incurred if he had traveled by air. Mr. Humphries challenges this limitation.

Before addressing the merits of the case, we take a moment to consider procedural objections raised by both parties. The Air Force says that we have no jurisdiction to settle the claim because Mr. Humphries did not comply with Board Rule 402 (48 CFR 6104.2 (2001)) in that he did not sign the claim, state the amount of money he seeks, or serve a copy of his initial filing with the agency. Mr. Humphries says that we should grant the claim in full because the Air Force did not file a timely response.

We view both of these contentions as inappropriate attempts to place hypertechnical legal obstacles in the way of a proceeding that is designed to be far less formal than a court case. Mr. Humphries did sign a subsequent filing, making clear that he does want us to settle the claim; the amount of money he seeks is easily calculable from the materials he provided; and the Board made sure that immediately after we received the initial filing, the Air Force had a copy of it. While we do not condone a claimant's failure to comply with our Rules of Procedure, we will not refuse to consider a claim when that failure can be, and has been, remedied. Similarly, although the Air Force did not file its response within the time initially directed by the Board, it did ask very soon after that deadline for an extension of time in which to file and then did file within the time permitted. The agency's small procedural misstep does not merit a sanction, much less the extreme sanction of granting a claim.

As to the merits of the case, we must resolve three questions: (1) Did the Air Force promise, by the issuance of travel orders, to pay all of the costs which Mr. Humphries might incur in driving to and from his temporary duty assignment? (2) Did the agency generally follow the requirements of the Defense Department's Joint Travel Regulations (JTR) in determining the amount of reimbursement to which the employee was entitled? (3) Were the agency's calculations as to reimbursement correct?

We first examine the travel orders themselves. The standard form used for the issuance of orders has a space under the heading "privately owned conveyance" for the agency to check one of two boxes – "Advantageous to the Government" or "Mileage reimbursement and per diem is limited to constructive cost of common carrier transportation and per diem as determined and travel time as limited per JTR." The travel office clerk who completed the form for Mr. Humphries checked the first of these boxes, "Advantageous to the Government." She then forwarded the form to the authorizing office. That office considered that allowing the employee to drive his own vehicle was not advantageous to the Government. The authorizing official changed the marking to the second box before signing the orders and delivering them to Mr. Humphries. On these facts, we conclude that the first version of the orders was merely a draft and the second version is the only one which could be deemed official orders. Thus, Mr. Humphries was authorized to drive to and from Virginia, but with the understanding that reimbursement of costs would be limited to the costs he would have incurred if he had traveled by common carrier.

Second, we conclude that the Air Force's general approach to reimbursement was consistent with requirements of the JTR. Under those regulations, "Travel of an employee should be by the most expeditious practicable transportation mode that meets mission requirements. The authorizing/order-issuing official is responsible for the transportation mode selected." JTR C2001-A.1 (Apr. 1, 2002); see also JTR C2001-B (setting forth factors to consider in making the determination). Here, the appropriate official selected air travel as "the most expeditious practicable transportation mode that meets mission requirements," and the employee has not suggested that this selection was unreasonable. When an employee uses a privately-owned conveyance as a matter of personal preference, he should be reimbursed for the allowable costs he actually incurs, except that the total amount of reimbursement "may not exceed the total constructed cost of the common carrier mode that would have been provided by the transportation officer including constructive per diem for travel by that mode." JTR C2152-A.4; see also JTR C4651-C, C4661-B.1. Here, the Air Force has followed this rule.

The final issue we must address is whether the agency's calculations in implementation of the rule were correct. Mr. Humphries drove from Hanscom AFB to Hampton and back, and claims reimbursement for the mileage driven (1212 miles)¹ plus \$32 for tolls paid en route. At the then-prevailing rate of 36.5 cents per mile (see JTR C2500),

¹When Department of Defense employees travel in privately-owned conveyances on official business, the distances for which reimbursement is made are those in the Defense Table of Official Distances (DTOD), not odometer readings. JTR C1065-A. We do not know whether Mr. Humphries used DTOD measurements or not in making his claim, and in light of the way in which we resolve the case, we need not inquire.

the claim for mileage is \$442.38. The total claimed transportation costs are therefore \$474.38. Mr. Humphries stopped for a night in Dover, Delaware, on the road south, and for a night in New York City on the road north, but he has not asked the Air Force to pay the costs of lodging or meals en route. The agency has paid the employee, in addition to the cost of his lodging in Virginia and a daily allowance for meals and incidental expenses there, a total of \$265. This amount consists of \$165, the alleged cost of a round-trip flight from Boston, Massachusetts (near Hanscom Air Force Base), to Newport News, Virginia (near Hampton), plus \$100 "to cover the costs associated with getting to and from the airport." In responding to the claim, the Air Force has stated that the airfare should have been \$200, rather than \$165, so it owes the employee the difference between these figures (\$35). The agency notes that the total costs it believes Mr. Humphries would have incurred had he flown to Virginia and back (\$300) were far less than the costs claimed (\$474.38). In commenting on the Air Force's response, Mr. Humphries has provided an electronic mail message from Hanscom AFB's contracted commercial travel office (CTO) which states that the round-trip cost of flying from Boston to Norfolk, Virginia (across a long bridge from Hampton), would have been \$535.

We set out in Russell E. Yates, GSBCA 15109-TRAV, 00-1 BCA ¶ 30,785, the basic requirements for determining the appropriate amount of reimbursement when an employee travels to a temporary duty assignment by means of transportation other than that selected by the agency:

[The agency must] 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. . . . The agency should then total the allowable costs.

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. . . . [C]onstructive 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.

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.

An example of the implementation of this procedure is contained in Peter C. Thurman, GSBCA 15562-TRAV, 01-2 BCA ¶ 31,516; see also JTR C4661-B.

The Air Force appears to have followed the procedure almost entirely correctly with regard to Mr. Humphries' claim. The only question which Mr. Humphries has raised as to the calculation of constructive costs of air travel is whether the cost of air travel quoted by the agency's CTO (\$535) or the airfare found by the agency itself (\$200) should have been

used in the calculation. Both figures appear to be accurate: the Government round-trip fare in April 2002 from Boston to Norfolk – the route used by the CTO – was \$498, and the Government round-trip fare at that time from Boston to Newport News – which was found by the agency – was \$200. The difference of \$37 between the Norfolk fare and the CTO's figure appears to be the CTO's service charge. We see no reason why a traveler in Mr. Humphries' situation should have flown to Norfolk, rather than Newport News, for the fare was much higher and the distance from Hampton much greater. See JTR C1058-A.1 ("An employee must exercise the same care and regard for incurring expenses as a prudent person traveling at personal expense.") Thus, the Air Force's figures were appropriate, except that they did not include an amount for the CTO's service charge. The constructive cost total should be amended to incorporate this charge. Even with this addition, the constructive cost total is, as the agency concluded, less than the cost of driving one's own vehicle.

Decision

Because the constructive cost of Mr. Humphries' trip was less than the total expenses he incurred when traveling by a means of transportation other than the one selected by the Air Force, the agency properly limited reimbursement to the constructive cost. The constructive cost is the sum of (a) the amount already paid, (b) the additional \$35 the agency acknowledges owing, and (c) whatever service charge the CTO would have made for writing a ticket for the employee's airfare, had he traveled by air.

STEPHEN M. DANIELS
Board Judge