

# **Board of Contract Appeals**

General Services Administration  
Washington, D.C. 20405

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October 19, 2004

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GSBCA 16393-TRAV

In the Matter of STEVEN J. MAASS

N. Lynn Board of Board & Borden, LLC, Frederick, MD, appearing for Claimant.

C. Bruce Sheaffer, Comptroller, National Park Service, Washington, DC, appearing for Department of the Interior.

**HYATT**, Board Judge.

An employee who purchased first-class airline tickets based upon a doctor's prescription, and pursuant to orders issued by his customary travel-approving officials, may not be required to reimburse the agency for the full added cost of first-class travel solely because of a failure to obtain a higher level of approval required under internal travel policy guidelines. The agency may recoup added costs only if it reasonably determines his medical needs could have been accommodated through the purchase of more economical tickets.

## Background

Claimant, Steven J. Maass, is a National Park Service employee who frequently travels on official business. In 2001, he was diagnosed with a medical condition that included symptoms of numbness and pain in his arms and legs. Because these symptoms appeared to be exacerbated by prolonged travel and cramped seating conditions, Mr. Maass's neurologist recommended that Mr. Maass use a larger seat, providing more leg room, for flights in excess of ninety minutes. He issued a prescription in support of this recommendation.

Mr. Maass presented the prescription to his immediate supervisor and others involved in the approval of travel arrangements within his office. Omega Travel, the contract travel agent, was consulted. Omega advised Mr. Maass that the prescription authorized first-class air travel and that each travel request would have to include a travel authorization that stated the need for reasonable accommodation of his medical circumstances along with a copy of the prescription.

Mr. Maass prepared twenty-three travel authorizations in fiscal year 2002, each of which included a statement concerning the need for "reasonable accommodation" of claimant's physical symptoms and a copy of the prescription. Each of these travel vouchers was approved by his supervisors and by the contract travel agency. Mr. Maass used first-class seating for each trip.

In October 2002, Mr. Maass was advised by the travel agency and his division within the Park Service that a "new" process was being implemented for first-class travel and that, in the future, the approval of the Secretary of Interior or appropriate designee would be required prior to use of first-class air travel. Upon being notified of this procedure, Mr. Maass followed it for fiscal year 2003.

In the summer of 2003, Mr. Maass received a bill from the National Park Service, seeking to collect the amount of \$22,071.24, representing the additional cost of flying first-class during fiscal year 2002. Mr. Maass made numerous attempts to appeal this action and obtain review within the agency. Eventually he got a letter from the agency which appears to deny his claim. Claimant appeals this decision, arguing that he was entitled to reasonable accommodations for his medical condition, he followed procedures as instructed, and he obtained approvals from his supervisors and from the contract travel agency.

### Discussion

An employee traveling on official Government business is entitled to be reimbursed the actual and necessary expenses of that travel within limits prescribed by statute and regulation. 5 U.S.C. §§ 5702, 5706 (2000). The Federal Travel Regulation (FTR) provides that when undertaking official business travel, a Government employee must use coach-class accommodations unless one of the exceptions permitted elsewhere in the regulation applies. 41 CFR 301-10.122 (2002). There is an exception available when health considerations dictate upgraded travel. The agency is authorized to approve such accommodations

[w]hen use of first-class is necessary to accommodate a disability or other special need. A disability must be substantiated in writing by a competent medical authority.

Id. at 301-10.123. Similarly, an agency may also approve a premium class of travel other than first-class, such as business class, if it is appropriate and available, to accommodate a medical disability. Id. at 301-10.124(c).

The Interior Department and the National Park Service have internal travel policies and guidelines which implement the FTR. Specifically, the Park Service guideline (which tracks the Department's policy) applicable to this matter states that:

Approval for utilization of first class . . . airline passenger accommodations is retained by the Assistant Secretary of Policy, Management, and Budget, and may not be redelegated. Approval should be obtained before departure to the maximum extent possible. All requests should be forwarded to the Deputy

Manager of AOC [Accounting Operations Center] for processing.

In addition, the policy also requires that

The employee must certify on the travel voucher the reasons for the use of first-class accommodations. Specific authorization or approval must be attached to, or stated on, the travel voucher and retained for the record. In the absence of specific authorization or approval, the employee is responsible for all additional costs resulting from the use of first-class accommodations.

The Department's position is that, in addition to obtaining the proper approvals within the National Park Service for travel expenditures, Mr. Maass, under the Department's internal policy in effect at all times relevant here, was required to obtain the approval of the Assistant Secretary for Policy, Management, and Budget. This requisite high-level approval was not sought, and thus not granted, for the twenty-three trips taken by Mr. Maass in fiscal year 2002, however. Interior notes, in its reply to the claim, that this policy is readily available to employees and travel officials, and is published on the Department's web site. As such, the employee, his supervisors, and the travel agency should have been aware of the requirements. Notably, Interior does not make the argument that no accommodation of Mr. Maass's condition was necessary or appropriate, but simply asserts that, since the proper approvals at the Departmental level were not obtained, the added cost of first-class travel must be absorbed by the employee.

We recognize the agency's reasonable concern about the failure to follow its internal guidelines, but we are not persuaded that the remedy proposed is entirely suitable, or required, under the circumstances. The FTR provision authorizing agencies to permit the use of first-class transportation when justified by medical needs is consistent with and recognizes the need to comply with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2000). The Department has supplemented this provision of the FTR in its internal guidelines. These guidelines must be construed and applied in a manner that will maintain consistency with the meaning and intent of the more general FTR provision and, in this situation, the ADA. Although the agency may reasonably regulate what type of upgrade is authorized, in order to control the additional expenses incurred, it is not necessary to apply the guideline so as to require recoupment of all expense exceeding the cost of coach-class transportation solely because internal procedures were not followed to the letter.

To elaborate, it may in some cases be entirely appropriate to disallow all costs in excess of coach-class seating when the proper approval was not obtained and the upgrade was not justified. In this case, however, Interior does not dispute the existence of valid health concerns that needed to be addressed when Mr. Maass traveled on official business. Mr. Maass furnished the agency with a medical prescription establishing that some type of accommodation, providing for more seat and leg room, was required for commercial air travel in excess of ninety minutes. Had Mr. Maass been aware of, and adhered to, the internal policy requiring a higher level of authorization than the usual channels, it seems likely that some accommodation of his needs would have been allowed in fiscal year 2002,

as it was in fiscal year 2003. Under the FTR and its internal procedure, Interior has the discretion to evaluate whether there are less expensive alternatives, such as the purchase of two coach-class seats, bulkhead seating, and business class seating, that may suffice to meet the employee's needs. We have no basis here for evaluating whether a more economical accommodation could have been made on some or all of the trips taken by Mr. Maass. It appears from the information provided, however, that his current travel is being processed in accordance with the guidelines and that he is being permitted to arrange for first-class seating when he travels on official business.

In some respects, this is not unlike those cases in which an employee fails to use a contract carrier when traveling on official business. In such a case, the errant employee is not precluded from recovering the cost of the ticket altogether, but, rather, is limited to reimbursement of the cost that the Government would have incurred had the contract carrier been used. See, e.g., Vera A. Wood and Michael C. Rierson, GSBCA 15637-TRAV, 02-1 BCA ¶ 31,693. Here, if Interior can establish that this employee's needs could have been accommodated through some other, more economical, type of arrangement (e.g., the purchase of two coach seats, if that would have been feasible and less expensive, or business class, if it was available), it may, under the policy, limit his travel reimbursement to the lesser amount. It is not, however, entitled to automatically recoup the full price difference between coach and premium travel, absent a reasonable determination that the costs were incurred unnecessarily.

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CATHERINE B. HYATT  
Board Judge