

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

December 15, 2006

GSBCA 16979-TRAV

In the Matter of THOMAS R. KEHNE

Thomas R. Kehne, March Air Reserve Base, Claimant.

Harry Bunn, Chief, Travel Section, National Finance Center, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

DeGRAFF, Board Judge.

Thomas R. Kehne is employed by the Department of Homeland Security (DHS). In the spring of 2006, Mr. Kehne traveled three times to perform temporary duty at a location approximately 200 miles from his permanent duty station. DHS prepared Mr. Kehne's travel authorizations to show the authorized mode of travel was either a rental car or a personally owned vehicle (POV). Mr. Kehne drove his motor home to his temporary duty location and used it as his lodgings while he performed his temporary assignment. He towed his car behind his motor home and used the car while performing official business in and around his temporary duty location. Mr. Kehne disagrees with the method DHS used to reimburse his travel expenses and he asks us to review the agency's actions.

The disagreement between Mr. Kehne and the agency stems in part from their readings of *Russell E. Yates*, GSBCA 15109-TRAV, 00-1 BCA ¶ 30,705 (1999), *reconsideration denied*, 00-1 BCA ¶ 30,785. In *Yates*, we explained how to calculate the appropriate amount to reimburse an employee who traveled to a temporary duty location by a means of transportation other than that selected by the agency. The rationale in *Yates* does not apply here, however, because DHS authorized Mr. Kehne to travel by POV and this is

what he did. His motor home falls within the Federal Travel Regulation's (FTR's) definition of a POV, which includes any vehicle which is not owned or leased by a government agency and which is not commercially leased or rented by an employee under a government rental agreement. 41 CFR 300-3.1 (2005). Because Mr. Kehne's motor home falls within the definition of a POV, he traveled by the means of transportation authorized by DHS and it is not appropriate to rely upon the rationale in *Yates* to resolve Mr. Kehne's claim.

The first issue presented by this claim is how to determine the proper amount to reimburse Mr. Kehne for his transportation expenses. The FTR explains he will be paid a mileage allowance which is determined by multiplying the distance traveled by the rate per mile established for the use of a POV. The allowance includes an employee's reimbursement for items such as gasoline, oil, repairs, and other expenses of ownership and operation. 41 CFR 301-10.301, -10.304. DHS reimbursed Mr. Kehne at the POV rate applicable to automobiles for the number of miles he drove to and from his temporary duty location plus the number of miles he drove while performing official business at his temporary duty location. Mr. Kehne points out that his motor home is more expensive to operate than the usual automobile and he believes it is unfair to pay him the mileage allowance which applies to automobiles. Mr. Kehne's motor home is, however, an automobile and the FTR does not allow agencies to take into account the type of automobile an employee operates. Whether a federal employee drives a Geo Metro or a motor home, the automobile mileage rate is the same. Mr. Kehne suggests perhaps he could be reimbursed for twice the number of miles he traveled because both his motor home and his car made the trip to and from his temporary duty location. DHS properly rejected this suggestion. Mr. Kehne used only one vehicle to transport him to his temporary duty location and it would not be appropriate to reimburse him as if he had somehow managed to make the trip simultaneously in two vehicles.

The second issue presented by this claim is how to determine the proper amount to reimburse Mr. Kehne for his lodging costs. Mr. Kehne asked to be reimbursed at a lodging rate available to other employees who stayed in hotels at the temporary duty location. The agency reimbursed Mr. Kehne for the actual cost of his lodging, which included items such as utility connection and use fees. DHS used the correct method for reimbursing Mr. Kehne for his lodging expenses. According to the FTR, a government employee traveling on official business is entitled to be reimbursed for actual lodging expenses, not to exceed the maximum lodging rate for the temporary duty location. 41 CFR 301-11.100. When an employee stays in a recreational vehicle, expenses such as fees paid for parking, utility connection and use, bath and shower use, and dumping may be considered to be lodging costs. 41 CFR 301-11.12(e). DHS properly reimbursed Mr. Kehne for the expenses he incurred which may be considered to be lodging costs.

Mr. Kehne says he was provided inaccurate or inadequate advice by DHS employees regarding his temporary duty travel. We agree with DHS that this was certainly regrettable. However, bad advice given by the agency's employees cannot modify the provisions of the regulations which establish the amount of Mr. Kehne's reimbursement. *Joel Williams*, GSBCA 16437-RELO, 04-2 BCA ¶ 32,769.

Finally, DHS asks us whether it would be proper for it to examine other vouchers submitted by Mr. Kehne in order to determine whether the agency made errors when it reimbursed the expenses he claimed. DHS needs to pose this question to its counsel's office.

MARTHA H. DeGRAFF
Board Judge