

DATE: July 8, 2020

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In Re: )

[REDACTED] )

) Claims Case No. 2019-CL-050203.2

Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Claims against the government may be allowed only for expenses authorized by statute or regulation. The claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed.

**DECISION**

A retired member of the U.S. Army requests reconsideration of the February 25, 2020, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2019-CL-050203.

**Background**

The member was called to active duty (AD) in January 2003. His orders directed him to perform AD not to exceed 365 days at Fort Leavenworth, Kansas. The orders and amending orders extending the member's tour to 730 days were sent to the member's home of record (HOR) address. The member's HOR was the member's place of entry on active duty (PLEAD). The member submitted a monthly DD Form 1351-2, *Travel Voucher or Subvoucher*, for the next 24 months claiming *per diem* which consisted of lodging, plus meals, and incidental expenses. In June 2008 the Fort Leavenworth CID [Criminal Investigation Detachment] Office opened an investigation into an allegation that the member committed travel fraud for claiming lodging expenses for rental quarters near Fort Leavenworth from a nonexistent rental company. The CID investigation found the member had commuted from his HOR, which was his PLEAD, to his

duty station. As a result of the CID investigation, the Army issued a Travel Voucher Summary in May 2011 which stated:

SUPPLEMENTAL FOR 1/16/03 – 12/31/04. COLLECTED BACK \$61,688.72 FOR UNAUTHORIZED PAYMENTS RECEIVED PER AUDIT OF TRAVEL VOUCHTERS PERFORMED BY THIS OFFICE. SM [service member] TRAVELED TO HOR WHILE ON DUTY. HOR IS WITHIN COMMUTING DISTANCE. SM IS IN DEBT FOR \$61,688.72.

The member subsequently made a claim for the denied *per diem* with the Defense Finance and Accounting Service (DFAS). DFAS denied the claim on the basis the member was entitled to only one round trip of travel between his HOR and his duty station, Fort Leavenworth, and noted collection of the overpayment for *per diem* totaling \$61,688.72 was required. During the years between the DFAS's denial of the member's claim and his appeal, the member pursued administrative actions before the Army Board for Correction of Military Records (ABCMR) to mitigate the consequences of his travel claim. The member received partial relief before the ABCMR in 2018. In 2019 the member initiated his appeal on the basis of the relief he obtained before the ABCMR. The DOHA appeal decision upheld DFAS's denial of the member's claim.

In the member's reconsideration request, he asserts through his attorney that it is highly unjust to pursue a debt against the member 15 years after the fact and imposes an extreme hardship on him. He states that this was his first mobilization and he was unfamiliar with submitting travel vouchers. He states that he and other reservists in the same situation were misinformed by the administrative staff and DFAS on how to properly fill out their travel vouchers. As a result, he states that a lot of good, honest reservists were caught up in the same mess as the member. He maintains that although the CID report alleged travel fraud, there is no evidence to support this allegation against him. He never submitted false receipts for lodging, nor did he ever deny that he lived 52 miles from Fort Leavenworth. He believed he was doing everything correctly and within the rules. The member states that given his financial situation, it would be "morally wrong" to enforce the debt against him.

### **Discussion**

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. A claimant must prove by clear and convincing evidence on the written record that the United States is liable under the law for the amount claimed. *See* DoD Instruction 1340.21 (Instruction) ¶ E5.7 (May 12, 2004). Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. Thus, the liability of the United States is limited to that provided by law (including implementing regulations). The interpretation of a statutory provision and implementing regulation by those charged with their execution, and the implementation of them by means of a consistent administrative practice, are to be sustained unless shown to be arbitrary, capricious or contrary to law. *See* DOHA Claims Case No. 2017-CL-073104.3 (August 5, 2019); DOHA Claims Case Nos. 2011-CL-072502.3 (August 1, 2013); and DOHA Claims Case No. 2009-CL-100601.2 (September 1, 2010).

The general rule is that reimbursement may be paid only for an expense authorized by statute or regulation. *See* DOHA Claims Case No. 2011-CL-072502.3 *supra*. Decisions on travel claims are rendered according to applicable Department of Defense regulations. In 2003 the Joint Federal Travel Regulations (JFTR) were applicable to uniformed members of the seven uniformed services (i.e., Uniformed Members of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration Commissioned Corps, and Public Health Service Commissioned Corps). For Uniformed Service personnel, the JFTR's authority is primarily derived from titles 10 and 37 of the United States Code (U.S.C.). Travel and transportation allowances for members of the reserve components (RC) are governed in part by 37 U.S.C. § 474. Provisions of the JFTR are also determined by Executive Orders and decisions of the Comptroller General, DoD General Counsel and DOHA. The Volume 1, ¶ U7150 of the JFTR states (emphasis added):

A. Active Duty with Pay

1. General

a. Applicability. This subparagraph applies to Reserve Component members called (or ordered) to active duty for any reason with pay under an order that provides for return to home or PLEAD.

b. Travel and Transportation Allowances when a Member Commutes. *Travel and/or transportation allowances are not authorized for travel between the home/PLEAD and the place of active duty when:*

(1) Both are in the corporate limits of the same city or town,

**(2) the member commutes daily between home/PLEAD and the place of active duty, or**

(3) the order-issuing official/installation commander determines that both are within reasonable commuting distance of each other and that the nature of the duty involved permits commuting.

However, members commuting under par. U7150-A1b(2) and U7150-A1b(3) are authorized the applicable automobile or motorcycle mileage rate (see par. U2600), with distances calculated per par. U3505-C, for one round trip between the duty station and,

(a) **home,**

(b) place of unit assignment, or

(c) place from which called (or ordered) to active duty.

In determinations required by item (3), areas within a reasonable commuting

distance are described in par. U3500-B. Regarding item (3), AEA may be paid, if authorized by the member's commanding officer, for any day(s) the nature of the duty requires the member to remain overnight and Government quarters and/or Government mess are unavailable. For this duty, the member is entitled to AEA as computed under par. U4510 for all meals and quarters, except for the meal ordinarily procured when commuting. Payment for local travel within/around the member's place of active duty may be authorized under Chapter 3, Part F.

Payment of *per diem* would not be proper because the member was on active duty traveling to and from his HOR/PLEAD and duty station. Under ¶ 7150-A1b, the member was entitled to his actual mileage for one round trip between his home and duty station. Moreover, payment of *per diem* would conflict with the active duty nature of the member's mobilization orders, since RC members mobilized to active duty are not entitled to *per diem*. See DOHA Claims Case No. 00102001 (April 10, 2001). Against this official documentary evidence, the member offers nothing except his own statement that he was advised by travel experts that he was permitted to do what he did. While it is unfortunate that the member may have been misinformed regarding what to claim on his travel voucher, that does not provide a basis for payment, since the government is not liable for the erroneous acts of its officers, agents, or employees. *Id.*

As to the member's reimbursement arguments based on equity, we are constrained by the applicable regulations. For travel claims, we must base our decisions on the law and implementing regulations applicable to the situation at hand; in this case, the relevant portions of the JFTR in effect at the time of the member's active duty orders. See DOHA Claims Case No. 96123013 (June 2, 1997). We are aware of no provision that would reimburse the member for his lodging, meals, and other incidental living expenses for the period he was attached to Fort Leavenworth while he commuted from his HOR.

Finally, the member may seek waiver of his debt pursuant to 10 U.S.C. § 2774. That statute provides authority for waiving claims for erroneous payments of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interests of the United States. Generally, those criteria are met by a finding that the claim arose from administrative error with no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver.

Therefore, reimbursement of the amount the member claims for *per diem* and lodging expenses is denied in accordance with established law and regulations.

## Conclusion

The member's request for reconsideration is denied, and we affirm the February 25, 2020, appeal decision in DOHA Claim No. 2019-CL-050203 disallowing the claim. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

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Gregg A. Cervi  
Member, Claims Appeals Board