

DATE: July 22, 2021

In Re:)
[REDACTED]) Claims Case No. 2021-CL-020301.2
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The Government is not bound by the erroneous acts of its agents, even when committed in the performance of their official duties. Neither misrepresentation by a transportation officer nor misinformation provided by military officials provide a legal basis for reimbursement of additional travel costs.

DECISION

A member of the U.S. Air Force requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-CL-020301, dated April 5, 2021. In that decision, DOHA denied the member's claim for \$2,625.34 in travel costs.

Background

On February 5, 2020, the member was issued permanent change of station (PCS) orders to move with his family from Guam to Korea. The member provided his Transportation Management Office (TMO) and his Military Personnel Flight (MPF) office with his children's ID card numbers and passports, as well as his wife's ID card, Japanese passport, and U.S. Green Card. The TMO made the member's travel arrangements to depart from Seattle-Takoma Airport to fly to Korea on a U.S. Government authorized contract flight. After the member's Consecutive Overseas Tour Leave, he arrived at Seattle-Tacoma Airport with his family on July 20, 2020, to depart for Korea, the following day. On July 21, 2020, he departed with his family for Korea. When he arrived at the U.S. Air Base in Korea, he encountered a problem with his wife's visa; she did not have the correct visa to enter Korea. On July 23, 2020, the member and

his family boarded a U.S. Government authorized flight back to the United States to obtain the correct documentation for his wife to enter Korea. The member procured lodging for his family to stay in while he resolved the issue with the Korean Consulate and filed the necessary paperwork for his wife's visa. The member was informed that due to the weekend, the visa would not be ready until July 28, 2020. The member then contacted the TMO to request a flight back to Korea and was informed that the next U.S. Government authorized flight to Korea would not be until August 14, 2020. The member states that he was told by the TMO that his only option to get to Korea earlier would be to book a flight on a commercial airline using his Government Travel Card (GTC) at a total cost of \$1,869.80. The member booked his family on the flight using his GTC. He also incurred hotel expenses in the amount of \$775.54 for the period of time he was waiting for his wife's visa to be issued. On July 28, 2020, the member and his family arrived in Korea. The member submitted a claim for reimbursement of \$2,625.34, the total cost for airfare and lodging.

In the appeal decision, the DOHA attorney examiner explained that payment may only be made for an expense authorized by statute and regulation. He explained the regulation in effect at the time of the member's travel and denied the claim.

On reconsideration, the member asks for relief on the basis of the circumstances at the time of his travel. He requests that DOHA review his case with the understating that his travel took place during a COVID-19 worldwide pandemic. He urges DOHA to readdress the policies of an inflexible regulation during a time when a large global event was occurring. He states that the basis of his reconsideration is that the agency responsible to enforce country clearance compliance at the TMO was unaware of any official guidance by the Department of Defense or the Department of State. He attaches the Foreign Clearance Guide (FCG) dated August 24, 2020, and states that the requirement for non-U.S. citizens to obtain an A3-2 visa prior to travel was published well after his travel dates. He states that as a member of the Air Force for over 25 years, he knows to check the FCG prior to any travel overseas. Therefore, prior to departing his leave location, he reread the FCG ensuring he had all the necessary documents required for his and his family members' travel. He states that he is unclear about what further actions he could have taken to ensure that his spouse was permitted to travel to Korea. He believes that the Joint Travel Regulation (JTR) should be reviewed for its deficiencies during this worldwide crisis. He states that the JTR does contain multiple amendments made in the last year concerning COVID-19 caveats, however most are reserved for civilian employee travel reimbursements.

Discussion

The well-established rule is that a claim can be paid only if there is a basis for such payment in statute or regulation. *See* DOHA Claims Case No. 2015-CL-082607.3 (March 31, 2017); and DOHA Claims Case No. 2010-CL-120701.2 (January 26, 2011). Regulations that are promulgated pursuant to an express statutory authority have the force and effect of law, and our Office cannot issue a determination at variance with such regulations. *See* DOHA Claims Case No. 2015-CL-082607.3, *supra*.

A member's entitlement to travel and transportation allowances is governed by title 37 of the U.S. Code and the JTR. The JTR implements policy and laws establishing travel and transportation allowances of members and Department of Defense (DoD) civilian travelers. The JTR has the force and effect of law for travelers.

Under JTR ¶ 010206, travel and transportation allowances are payable only after valid orders are issued. The order directs travel to, from, or between official points and serves as the basis for the trip and associated reimbursements. A travel order may only contain authority for travel and transportation allowances provided within the JTR.

Under JTR ¶ 010302, a traveler cannot be reimbursed more than once for the same allowance or expense.

Chapter 5 of the JTR governs permanent duty travel (PDT) and the resulting PCS allowances resulting from that travel. Under JTR ¶ 050201, a member and his dependents must use Government or Government-procured travel for transoceanic travel. Under ¶ 050202, a member and his dependents must use the TMO for PDT.

In this case, the member seeks reimbursement for his travel and his dependents' travel on their second trip overseas to his new permanent duty station (PDS) in Korea on a commercial airline with airfare he purchased on his GTC, along with reimbursement for their lodging after their return to the United States. Under the above-cited applicable regulations, the member is not entitled to reimbursement for their duplicate trip to his new PDS in Korea. His orders did not authorize their subsequent duplicate travel back to Korea after returning to the United States when his spouse was unable to enter Korea on her visa. In addition, the airfare the member booked for his family's return to Korea, although charged to his GTC, was not made through his TMO.

Although the member may have been given incorrect information regarding his wife's visa for entry into Korea, absent specific authority, the government may not pay those expenses that the member was not entitled to receive under statute or regulation. *See* DOHA Claims Case No. 2010-CL-060201.2 (July 29, 2010); and DOHA Claims Case No. 08122401 (January 8, 2009).

As for any amendments or changes to the JTR for DoD civilian travelers during COVID-19, the JTR sets out express authority for travel and transportation reimbursement, which may be different for members and civilians, as indicated in the regulations.

Conclusion

The DOHA Claims Appeals Board upholds the appeal decision dated April 5, 2021, sustaining the denial of the member's claim. In accordance with ¶ E7.15 of Department of Defense Instruction 1340.21, this is the final administrative action of the Department of Defense in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board