

DATE: February 7, 2022

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In Re: )

[REDACTED] )

Claimant )

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) Claims Case No. 2020-CL-120901.2  
)  
)

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under the authority of 31 U.S.C. § 3702(a)(1), the Defense Office of Hearings and Appeals (DOHA) has the appellate authority to settle military member claims, including travel claims.

DOHA has no authority to intervene between agencies regarding their interagency agreements on use of military personnel and any travel entitlements resulting from those agreed military member assignments.

**DECISION**

A member of the Public Health Service (PHS) requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-CL-120901, dated July 6, 2021.

**Background**

Pursuant to an agreement between the PHS and the Environmental Protection Agency (EPA),<sup>1</sup> the member was issued permanent change of station (PCS) orders for him and his family to move from his duty station in Maryland to Oregon to work for the EPA. His orders were issued on September 1, 2020. Citing the Joint Travel Regulations (JTR), he was authorized travel and relocation. In addition, his orders directed him to go to the PHS website for travel and

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<sup>1</sup>As set forth under the provisions of Section 15(B) of Public Law 91-604 and Section 214(a) of the PHS Act, the PHS and the EPA issued an agreement dated May 31, 1977, which allowed the transfer and detail of uniformed members of the PHS to perform duties pursuant to an assignment with the EPA.

relocation information. He executed his move to Oregon but the EPA denied reimbursement of the cost of shipment of his household goods and travel to his new duty station on the basis that he did so prior to receiving the signed travel authorization.

In October 2020 the member appealed the EPA's denial of the reimbursement of \$9,850.23 for his PCS move to the U.S. Civilian Board of Contract Appeals (CBCA). On December 7, 2020, the CBCA determined that they lacked the statutory authority to consider his appeal under 31 U.S.C. § 3702(a)(3) because he was not a federal civilian employee but a uniformed member of the PHS. Therefore, the CBCA transferred the member's appeal to DOHA since DOHA has the appellate statutory authority to consider service member travel and transportation claims under 31 U.S.C. § 3702(a)(1)(A).

In the DOHA appeal decision, the attorney examiner determined that the member, in anticipation of his impending move, reasonably attempted to make plans to safely execute it during the height of the COVID-19 pandemic restrictions on travel. The attorney examiner explained that under the JTR, in specific travel circumstances in need of clarification, DOHA and the CBCA determine how the regulations and departmental instructions should be applied. He noted the unique circumstances in the member's case due to the challenges of COVID-19 and the fluidity of the travel guidance being issued by various DoD and U.S. Government entities. He detailed how beginning in March 2020 many things changed due to COVID-19. Specifically, military members and civilian employees were advised to work from home; in the military, PCS and temporary duty travel (TDY) normality changed; and the JTR was actively augmented by the Secretary of Defense's memorandum and the service issuances. All these changes and measures had the same purpose: keep DoD and U.S. military members and civilian employees, and their families as safe as possible.

The attorney examiner allowed the member's claim under JTR ¶ 050403, *Dependent Travel before an Order is Issued*. He specifically found that the member met the criteria of that paragraph because he was advised that his PCS orders would be issued prior to their issuance and he was eligible for dependent travel and transportation allowances. Further, the U.S. Public Health Service Travel Coordinator/Military Advisory Panel Representative of the Commissioned Corps Headquarters advised DOHA to apply ¶ 050403 to the member's case considering the challenging aspects that the COVID-19 pandemic had in the circumstances surrounding his PCS move.

On August 6, 2021, the EPA requested reconsideration of the DOHA appeal decision. The EPA disagreed with the amount payable to the member for reimbursement of transportation of his household goods. The EPA explained that it has its own relocation department for relocating civilian employees. As such, the EPA has their own service provider that transports household goods. Therefore, if an employee decides to do a Do-It-Yourself (DITY) move, which is an option, the EPA only pays the actual dollar amount of the cost of the move. The EPA determined that the actual cost of the member's move (spent on rentals, tolls, fuel and weigh tickets) was \$2,992.77. The EPA attached the receipts and requested that the actual dollar amount be paid instead of the member's estimated cost of \$7,500.00 for his move.

Responding to the EPA's reconsideration request, the member stated that the paragraphs in the JTR that should apply to the calculation of the DITY move of his household goods are ¶¶ 051502-C1 and E1-d. He stated that the application of this section of the JTR is also supported by information he found of his services' webpage. He asserted that the government allows an incentive payment for service members who move their own household goods. He stated that in past moves, this has been calculated and paid to him based on the comparable commercial moving rate. He stated that he believes the JTR refers to this as the "Best Value" cost. He stated that the EPA seems to be interpreting the "Best Value" cost as reimbursement of only the moving truck rental and fuel. He stated that he believes the weight of his household goods should also be included, as it was in past moves he has experienced with other agencies.

After receiving both the EPA's and the member's reconsideration requests, the DOHA attorney examiner contacted the PHS Travel Coordinator/Military Advisory Panel Representative and requested that PHS consult with the EPA in order to come to resolution on the issue. The attorney examiner advised the PHS that although the member's orders indicate that the EPA funded his travel, the source of his entitlement for reimbursement as a military member were found in the JTR and the PHS's regulations. On November 15, 2021, PHS advised DOHA that although they met with EPA and had a fruitful meeting, EPA requested a written response from DOHA in this matter.

### **Discussion**

Under 31 U.S.C. § 3702(a)(1)(A), DOHA has the appellate authority to settle claims involving military member claims for pay and allowances, including travel and transportation. As noted above, the CBCA has the appellate authority to settle claims involving civilian employee travel and transportation. The implementing regulation for DOHA's authority is contained in Department of Defense Instruction 1340.21 (April 12, 2004). Under Instruction ¶ E7.12, a claimant (member) or the Component concerned, or both, may request reconsideration of a DOHA appeal decision. Under Instruction ¶ 2.2 the non-DoD Components are the Coast Guard, when it is not operating as a Service in the Navy under agreement with the Department of Homeland Security, and the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA), under agreements with the Departments of Health and Human Services and Commerce.

In the DOHA appeal decision, the attorney examiner allowed the member's claim for \$9,580.23 in reimbursement for travel expenses for himself and his dependents and the weight of his household goods moved in a DITY PCS move from Maryland to Oregon. The EPA, an agency that is not listed in the Instruction, has requested reconsideration of the calculation of the portion of the claim related to the transportation of his household goods. The member's estimate was \$7,500.00 and the EPA asserts that the member is limited to his actual cost of his household goods move.

As a uniformed service member of the PHS, the member's travel entitlements for his household goods move are set forth under the JTR, specifically ¶ 051502. The member's orders list that the JTR is the authority for his travel and relocation. In addition, his orders reference a PHS website that contain a pamphlet concerning his entitlements. Although the EPA appears to

have funded the member's travel, as the funding on his orders reflects an EPA account, the member's entitlement to reimbursement should be made in accordance with JTR ¶ 051502. Under that paragraph the member should be paid a monetary allowance equal to 100% of the Government's constructed "Best Value" cost for the actual HHG weight transported up to the member's maximum authorized weight allowance. *See* ¶ 051502-C1. The PHS, as the member's service, should calculate that amount under the JTR and their implementing regulations.

### **Conclusion**

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: Jennifer I. Goldstein

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Jennifer I. Goldstein  
Member, Claims Appeals Board