

DATE: March 7, 2022

In Re:)

[REDACTED])

Claimant)

Claims Case No. 2020-CL-072702.2)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Generally, the Joint Travel Regulations (JTR) provide that *per diem* is not payable at the new permanent duty station (PDS) for temporary duty (TDY) en route in connection with permanent change of station (PCS) travel.

Upon accession into the U.S. Navy, a Naval Officer was ordered to TDY en route to his PDS for three separate, successive, mandatory trainings. The first TDY station was in Rhode Island; the second was in Florida at what would ultimately become his PDS; and the third was back in Rhode Island. In this narrow factual situation, we find that pursuant to the JTR Appendix A, the effective date of his PCS orders was after the completion of his last TDY.

DECISION

A member of the U.S. Navy requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2020-CL-072702, dated July 22, 2021. In that decision, DOHA denied his claim for \$7,897.46 in *per diem* for en route temporary duty (TDY) at Mayport, Florida, during his permanent change of station (PCS) travel to that station.

Background

The record shows that member is an officer in the Judge Advocate General Corps (JAGC) of the Navy and was newly accessed in 2019. He has a dependent spouse and two dependent minor children. When he was accessed, he was issued orders dated April 16, 2019, which contained two different but important pieces of information. The first part directed him to

execute three TDY tours, each one being at a necessary training school which he had to complete successfully to continue onto the next location. The orders directed the following TDY tours with *per diem*: (1) Officer Development School (ODS), Newport, Rhode Island, approximately 34 days, to report April 26th through 28th, 2019, and graduate on May 31, 2019; (2) Summer Internship Program (I-STOP), Mayport, Florida, approximately 69 days, to report not later than June 3, 2019, and complete the training on August 19, 2019; and (3) Naval Justice School (NJS) at Basic Lawyer Course, Newport, Rhode Island, approximately 75 days, to report August 10th to 12th, 2019, and graduate on October 25, 2019. Upon graduation, the member was directed to report to his permanent duty station (PDS), Mayport, Florida, by October 31, 2019.

These orders also stated that the member's transfer was funded for him and his authorized dependents pursuant to the Joint Travel Regulation (JTR) ¶ 5215. The orders further stated that member's dependents acquired on or prior to the orders' effective date are authorized travel and transportation allowances from the place at which the dependents are acquired to the new PDS, up to the travel and transportation entitlements for travel from the old PDS to the new PDS. The orders cited the JTR's appendix for the definition of the effective date of PCS orders.

The *per diem* allowances in dispute are reimbursement for the member's TDY at Mayport during the period June 3, 2019, to August 8, 2019, which includes lodging in the amount \$4,294.96, and meals and incidentals in the amount \$3,602.50, totaling \$7,987.46. The member's finance office denied the member reimbursement on the basis that *per diem* was not authorized in the same geographical area as his PDS. The Defense Finance and Accounting Service (DFAS) upheld the finance office's denial of the claim. DFAS determined that under JTR M3003-2A, TDY means duty at a location other than the PDS; and JTR M4209 states that a member will not be entitled *per diem* for TDY when PCS orders are issued designating the TDY station as his PDS, effective either immediately or on a later date. DFAS also cited JTR Table 2-27-2a, which states that reimbursement for *per diem* within the PDS local area is not authorized for a member who travels or has TDY within the PDS limits.

On appeal, the claimant explained that being new to the Navy, he was unfamiliar with the rules of official travel and, therefore, he was heavily reliant on advice from more experienced personnel. In particular, he wrote that he was repeatedly advised that a member on TDY should either (a) lodge on-base or (b) obtain a certificate of non-availability (CNA) and lodge off-base. The DOHA adjudicator upheld DFAS's denial of the member's claim relying on the well-established rule that *per diem* cannot be paid incident to duty at the member's PDS. He explained that this includes TDY performed en route at the member's new PDS during PCS travel to that new PDS, even if that TDY was followed by a break caused by leave or TDY at another station before the member formally reported for permanent duty at the new PDS.

In the claimant's reconsideration request, he states the JTR does not address his probationary student status or lawful orders conflicting with the JTR. He states a service member is trained from day one to follow orders and it is grossly unfair for DFAS to expect an inexperienced new accession to recognize that their very first set of orders may be in conflict with a table that is buried in a JTR.

Discussion

Our Office must render decisions based on applicable statutes, regulations and prior administrative decisions. The well-established rule is that a claim can be paid only if there is a basis for such payment in statute or regulation. Under title 37, United States Code, the JTR implements regulations for travel entitlements for uniformed service members in connection with travel, and as such, it has the force and effect of law. Generally, the JTR provides that *per diem* is not payable at the new PDS for TDY en route in connection with PCS travel. See DOHA Claims Case No. 2018-CL-062601.2 (April 8, 2019); and DOHA Claims Case No. 2009-CL-121402.3 (April 21, 2010).

Pursuant to the JTR Appendix A, the effective date of a PCS order is the date the member is required to begin travel from the old PDS, the member's home, primary residence, place last entered active duty, last TDY station, or safe haven location or designated place, to arrive at the new PDS, primary residence, home or place last entered active duty, by the authorized mode of transportation.

According to the Guide to the Navy JAG Corps, a newly commissioned Navy JAG officer is required to serve at least four years of active duty. This time period starts when the officer reports to his first duty station following the successful completion of ODS and the Basic Lawyer Course. Members who have never served as a commissioned officer in the Navy must attend ODS, which is a five-week course held at Naval Station Newport in Newport, Rhode Island. ODS provides training necessary to prepare members to function in their roles as a newly commissioned Naval Officers. ODS provides a basic introduction into fundamental aspects of leadership while providing a working knowledge of available references. After completion of ODS, members are required to attend Basic Lawyer Course at the Naval Justice School (NJS) onboard Naval Station Newport. The ten-week Basic Lawyer Course trains Navy lawyers in the fundamentals of military justice and relevant civil law, with particular focus on the development of trial advocacy skills, administrative law and investigations, legal assistance, and basic national security law. Upon completion of the Basic Lawyer Course, members will then be qualified to report to their first PDS.

In this narrow factual situation, we find that pursuant to the JTR Appendix A, the effective date of the member's PCS orders was after the completion of his last TDY, *i.e.*, the date he was required to begin travel from his last TDY station to arrive at the new PDS. In these specific circumstances, we find that the member's orders were written in compliance with the JTR and its definition for the effective date of a PCS; the member could not begin his PCS move to his new PDS until he had graduated from both the ODS and the Basic Lawyer Course. Therefore, we find that the member was entitled to *per diem* during his TDY at Mayport while he attended the STOP-1 course. The member's claim for *per diem* must be paid for the period June 3, 2019, to August 8, 2019. *Cf.* DOHA Claims Case No. 96100801 (July 22, 1997) (holding that a member who graduated from the Air Force Academy and departed to his first PDS, may be paid *per diem* for TDY at the Academy); and Comptroller General decision B-130522, Feb. 20, 1957 (holding that a member may be paid *per diem* on TDY during an emergency stopover at his PDS because it was necessitated by circumstances beyond his control).

Finally, although the DOHA Claims Appeals Board's decision in this case is a final action, due to prior long-standing case precedent, we limit our decision in this matter to the specific case in front of us, and therefore, it is not to be considered precedent in all claims covered by DoD Instruction 1340.21 (May 12, 2004). *See* Instruction ¶ E.7.15.2

Conclusion

The member's request for reconsideration is allowed and we overturn the appeal decision in DOHA Claim No. 2020-CL-072702. In accordance with DoD Instruction 1340.21 ¶ E.7.15.2, 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: Richard C. Ourand, Jr

Richard C. Ourand, Jr
Member, Claims Appeals Board