

DATE: April 6, 2023

In Re:)
[REDACTED]) Claims Case No. 2022-CL-021802.3
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. 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 member of the U.S. Marine Corps Reserve (USMCR) requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2022-CL-021802, dated August 29, 2022.

Background

The record shows that the member was ordered to temporary assigned duty (TAD) from November 2017 to February 2020. During that period, the member submitted monthly TAD travel vouchers to the Defense Finance and Accounting Service (DFAS) and received reimbursement for lodging and meals and incidental expenses (M&IE) claims through May 31, 2019.

In 2019, a criminal investigation was conducted by the Naval Criminal Investigation Service (NCIS) into members falsifying lodging receipts and utility statements at the member's TAD station. The member's TAD travel vouchers were identified as suspicious, and he was brought in for questioning. On May 21, 2019, after advisement of his rights under the Uniform Code of Military Justice (UCMJ), the member admitted to submitting inflated travel claims and creating false receipts to file with his travel claims. The member stated that he submitted the

false receipts after he had tried to submit his utility receipts along with his lodging receipts and was told by the Command's administrative staff that only one receipt for lodging per month could be submitted. In July 2019, a report of investigation (ROI) was sent to DFAS's disbursing office in accordance with Department of Defense Financial Management Regulation (DoDFMR), Volume 5, informing DFAS that NCIS's investigation had confirmed that the member had submitted falsified lodging receipts. Specifically, the ROI found that although the member split rent with another member at the rate of \$850.00 per month, or \$425.00 each, he inflated his monthly lodging claims by creating and submitting receipts. The quantified level of fraudulent activity for the months of inflated claims was later determined to be a total of \$560.00. On January 27, 2020, the member's Commanding Officer found that the member committed the offenses of making a false and fraudulent claim and making a false statement in submitting false claims for the months of October 2018, December 2018, and January 2019. The final disposition, as reflected in the member's Unit Punishment Book (UPB), for committing these offenses was forfeiture of pay in the amount \$2,446.00 per month for two months, and suspension of that forfeiture after six months at which time, unless sooner vacated, the suspension would be remitted without further action. The member did not appeal this disposition.

In March 2021, the member appealed DFAS's denial of reimbursement for lodging and M&IE allowances for certain periods during the timeframe November 16, 2017, through February 29, 2020. DFAS reviewed the member's appeal, the NCIS findings and the Commanding Officer's determination. On December 20, 2021, DFAS determined that the fraudulent charges against the member were only applicable to the claims submitted for the period October 2018 through April 2019. Therefore, DFAS allowed the member's claims for reimbursement for lodging and M&IE allowances for the periods November 16, 2017, through September 30, 2018, and May 1, 2019, through February 29, 2020. On July 14, 2022, on remand from DOHA, DFAS amended their determination to allow the member reimbursement for the periods November 16, 2017, through September 30, 2018, the month of November 2018, and February 1, 2019, February 29, 2020. On August 29, 2022, the DOHA attorney examiner upheld DFAS's denial of the member's claims for the months of October 2018, December 2018, and January 2019.

In the member's reconsideration request, he details the circumstances surrounding his acceptance of Non-Judicial Punishment (NJP) in January 2020. He states that on May 21, 2019, when he was brought in for questioning by NCIS, he was recovering from a motorcycle accident which occurred a few days before and was taking pain medicine. He states that he answered all the questions honestly and was told by the NCIS agent that if he brought in his utility bills reflecting that they matched his monthly claims, he would have nothing to worry about. He states that he delivered the utility bills the following week. The day prior to going to a court-martial, he was given the option to accept NJP before his Commanding Officer "with a suspended punishment." He states that he was informed that no financial punishment or restriction would be applied unless another issue arose prior to the end of his TAD orders. Therefore, he accepted NJP over the court-martial. He states that when he went into the NJP proceedings, he brought the utility statements. He states that after the Commanding Officer asked him if he created the receipts, he was not given an opportunity to explain why he created the receipts. At the end of the NJP, the Commanding Officer reconfirmed that all of the

member's punishment would be suspended. Therefore, the member did not appeal it. The member submits an audio clip of another member's court-martial which he states reflects the Commanding Officer's presuppositions regarding members falsifying lodging receipts and utility statements at the member's TAD station. The member references testimony given by the Company Gunnery Sergeant in that court-martial. He states that when asked if the Commanding Officer expected a certain result from the fraud cases, the Company Gunnery Sergeant answered that the Commanding Officer wanted the maximum punishment of any conviction for the crime. Given this background information, the member resubmits his travel claims for the months of October 2018, December 2018, and January 2019, completed correctly, with the rental and utility receipts attached. He states that he was not trying to cheat the system, he was just given bad directions and no training. He states that he was punished through NJP with a suspended pay reduction and should not have to suffer any more financial loss.

Discussion

The burden of proving the existence of a valid claim against the United States is on the member asserting the claim. A member must prove by clear and convincing evidence on the written record that the United States Department of Defense 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). Regulations that are promulgated pursuant to an express 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. 2021-CL-020301.2 (July 22, 2021); and DOHA Claims Case No. 2015-CL-082607.3 (March 31, 2017).

A member's entitlement to travel and transportation allowances is governed by title 37 of the U.S. Code and the Joint Travel Regulations (JTR). The JTR implements policy and laws establishing travel and transportation allowances of members. The JTR has the force and effect of law for travelers. Fraudulent claims are discussed in the JTR at paragraph 010302-B. That paragraph states:

B. Fraudulent Claims. If a reasonable suspicion of a falsified expense for lodging, meals, or incidental expenses exists and the suspicion is identified before the traveler is reimbursed, the applicable per diem or AEA [actual expense allowance] is denied for the entire day for which the suspected expense is claimed. If there is reasonable suspicion of a falsified expense other than the cost of lodging, meals, or incidental expenses, the suspicious expense is denied.

Volume 5, Chapter 12, of the DoDFMR defines a fraudulent claim as any intentional deception designed to unlawfully deprive the United States of something of value or to secure from the United States a benefit, privilege, allowance, or consideration to which a claimant is not entitled and specifies the process for addressing a fraudulent claim paid.

In this case, an investigation was initiated by the NCIS after the member's claims for payment for lodging were determined to be suspicious. The member admitted to the submission of falsified claims for lodging during an interview conducted by NCIS. The ROI issued by NCIS confirmed that the member's claims for lodging were fraudulent and resulted in a loss to the government of \$560.00. The member also admitted to submitting false claims during his NJP and was found guilty by his Commanding Officer to have committed the offenses of making a false and fraudulent claim and making a false statement in submitting false claims for the months of October 2018, December 2018, and January 2019. As set forth under the JTR, DFAS properly denied the member's subsequent claims for those months, even though he resubmitted them with the corrected receipts. *See* DOHA Claims Case No. 2015-CL-09102.2 (February 2, 2016); and DOHA Claims Case No. 2012-CL-121902.2 (April 30, 2013). In the appeal decision, the DOHA attorney examiner upheld DFAS's denial of the claims for October 2018, December 2018, and January 2019, finding that the member submitted fraudulent lodging claims for those months. We find that the record evidence supports this finding.

As to the member's submission of the audio clip, DOHA is unable to consider it because we are bound by the written record as presented to us by the component concerned and the member. DOHA must base its decisions on the legal precedent and an objective analysis of the written record before us. Even if we accept that the Commander sought the maximum penalty for members who submitted fraudulent claims and was unwilling to listen to the circumstances leading the members to submit falsified receipts, the record evidence still supports the finding that the member submitted fraudulent claims for the months of October 2018, December 2018, and January 2019.

Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2022-CL-021802, dated August 29, 2022, 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

Catherine M. Engstrom
Chairperson, Claims Appeals Board

SIGNED: Jennifer I. Goldstein

Jennifer I. Goldstein
Member, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board