

DATE: April 12, 2023

In Re:)
[REDACTED]) Claims Case No. 2022-CL-081101.2
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The well-established rule is that a claim can be paid only if there is a basis for such payment in statute or regulation.

DECISION

A member of the U.S. Army requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2022-CL-081101, dated October 13, 2022.

Background

On December 13, 2019, the member was issued permanent change of station (PCS) orders authorizing concurrent PCS travel from Washington, D.C., to the Democratic Republic of the Congo (DRC) for the member and her dependents. The member's orders stated her reporting date to be January 10, 2020. On January 8, 2020, her orders were amended to change her reporting date to February 5, 2020. On January 30, 2020, the member initiated her PCS move and elected for her dependents to stay behind to receive their passports and finish their academic semester of school. She was advised by her unit's finance office that her dependents would be able to delay their move to finish school. However, she was not told that the delay would preclude support for her dependents until their PCS. On January 22, 2020, the member's household goods (HHG) and privately owned vehicle (POV) were shipped. Her dependents were scheduled to perform their PCS move on March 25, 2020. However, on March 13, 2020, prior to their move, a Stop Movement Order was issued by the Department of Defense (DoD)

due to the COVID-19 Pandemic. The order was issued by the Deputy Secretary of DoD in a memorandum entitled *Stop Movement for all Domestic Travel for DoD Components in Response to Coronavirus Disease 2019*. On March 23, 2020, the Assistant Secretary of Defense for Manpower and Reserve Affairs issued a memorandum entitled *Military Personnel Guidance for DoD Components in Responding to Coronavirus Disease 2019*. That memorandum outlined the travel and transportation allowances authorized to travelers affected by COVID-19. As a result, the member's family did not depart their residence, a home that the member still owned and resided in prior to the PCS move.

On April 22, 2020, the member received reimbursement from the Defense Finance and Accounting Service (DFAS) for her PCS travel, including airfare, taxi service and dislocation allowance (DLA) in the amount of \$5,149.66. In June 2020, the member contacted her Human Resources Command (HRC) when she learned that she was no longer receiving entitlements for her dependents stateside. On August 15, 2020, the member's dependents performed their PCS travel to the DRC. On September 3, 2020, the member received amended orders authorizing deferred dependent travel due to COVID. Also on September 3, 2020, a temporary duty (TDY) order was issued authorizing delay at the original permanent duty station (PDS) from January 30, 2020, through August 16, 2020, with a departure date of August 15, 2020. On September 8, 2020, the member submitted a claim for her dependents' airfare (\$7,224.51), airport transportation (\$128.18) and private lodging cost (\$17,357.50). On October 6, 2020, DFAS paid the member \$8,414.88 for her dependents' travel expenses and dislocation allowances (DLA) at the dependent rate. Under the Remarks section of the Travel Voucher Summary for the payment, in pertinent part it is stated:

paid dependent PCS travel, airfare, and transportation to airport. did not pay dependent delay at departing pds, please clarify location of dependents delay. If dependents delayed at residence per DOD no incidentals are authorized to be paid.

The member returned from her overseas duty tour in March 2021. On June 30, 2021, the member resubmitted her claim for her dependents' *per diem* (lodging and meals and incidental expenses (M&IE)) during the period January 2020 through August 2020, to DFAS. On July 2, 2021, DFAS paid the member \$30,146.50 for her dependents' M&IE. In the Remarks section of the Travel Voucher Summary it is noted that the \$30,146.50 payment was for the member's dependents' meals only at the Washington D.C. rate from January 30, 2020, through August 15, 2020. It is also noted that the member needs to submit a valid lodging receipt or statement in lieu of (SILO) with the lodging location, and daily rate with taxes and fees broken out. On July 7, 2021, the member submitted an additional claim for \$17,357.50 in private lodging expenses. DFAS reports that there was confusion concerning the exact dependent location during the claimed time period. The member's claim for her dependents' lodging led DFAS to the discovery that the \$30,146.50 in M&IE was paid in error. On July 16, 2021, DFAS advised the member by email that she was not entitled to receive *per diem* for her dependents, either lodging or meals, and the erroneously paid \$30,146.50 for meals from January 30, 2020, through August 15, 2020, would be collected. DFAS advised her that her dependents were never in a travel status and were not in an awaiting transportation status in temporary lodging. Instead, her dependents' travel was delayed at their home of residence prior to departing. On July 19, 2020,

DFAS advised the member by email that she should be able to receive special separation housing payments for her dependents due to the restrictions on the flights to the DRC. In order to receive the special housing payments, DFAS advised her to submit a claim for basic allowance for housing (BAH) with her Active Duty Finance Center. On July 26, 2021, DFAS issued a Travel Voucher Summary reflecting that the \$30,146.50 had been paid in error and would be collected. Under the Remarks section it is noted that the member's dependents' M&IE could not be paid because her dependents remained at her residence from January 30, 2020, through August 15, 2020. The record reflects that DFAS issued the member a debt notification for \$30,146.50 on July 27, 2021. The record further reflects that the member was paid \$18,826.00 in BAH in August 2021.

On March 7, 2022, the member requested an official copy of the notification of indebtedness from DFAS after her pay was garnished. On July 14, 2022, DFAS advised the member that after consideration of her appeal of the recoupment of the \$30,146.50, they found the collection of the debt that was initially paid for M&IE while awaiting transportation to be valid. DFAS advised the member that she could pursue the matter as a claim, appealing their finding that the debt was valid. She was also advised that she had the right to request waiver of the indebtedness by filing a DD Form 2789, *Waiver/Remission of Indebtedness Application*.

The member appealed DFAS's recoupment of the \$30,146.50 by claiming her entitlement to it. In her appeal, she stated that she worked with her gaining unit in September 2020 to file her travel voucher for her dependents. She acknowledged that in the notes of her travel voucher dated October 2, 2020, it stated that payment was not made because of dependent delay at PDS, and that she should clarify the location of her dependents' delay. It further stated that if dependents were delayed at the member's residence, no incidentals are authorized. The member stated that she had originally missed viewing this statement on the voucher. She stated that when they departed the DRC in March 2021, she was able to review guidance from her HRC on COVID delays in travel that was originally published in October 2020 in the All Army Activities (ALARACT) 080/2020, *Urgent – Update Army Guidance for Filing Permanent Change of Station (PCS) and Temporary Duty (TDY) Travel Claim for Soldiers Impacted by the Corona Virus Disease 2019 (COVID-19) and Military Pay and Allowances Flow Chart*. Based on this guidance, she again requested *per diem* for her dependents, and was paid in July 2021 the \$30,146.50 in M&IE. She stated that after she was paid, she was also asked to provide copies of hotel receipts or a SILO for her dependents' lodging. The finance office then told the member that because her dependents resided in her private residence prior to their move, she was not eligible for any dependent allowances. The member stated that the disallowance of her claim for this reason was never evidenced in any regulations she had seen. When her pay was garnished by DFAS for collection of the debt in the amount of \$30,146.50, she again questioned her entitlement and DFAS advised her that her PCS move and delay took place in January 2020, and the Army's guidance in ALARACT 080/2020 was not published until October 6, 2020. DFAS also advised her that the ALARACT 080/2020 pertained to the travel restrictions issued in March 2020, there were no restrictions in January 2020 when the member performed her PCS, and since her dependents did not PCS with her, there were no allowances payable for them while they remained at her old PDS. The member stated that the circumstances behind her PCS were complicated, and she did not receive her original orders until December 2019, giving her only two months to prepare for her move. She even had to ask for an amendment to her report date

because of the holiday season, and her intention was only to delay her dependents' arrival in the DRC until mid-March 2020, or roughly 45 days after her arrival.

On August 4, 2022, DFAS upheld the denial of the member's claim for \$30,146.50 in M&IE. DFAS explained that although the member's dependents were unable to PCS as planned on March 25, 2020, the memorandum concerning the Stop Movement Order did not authorize any allowances for her dependents. DFAS found that the member's dependents were not authorized *per diem* entitlements as they never detached or departed their old PDS, her dependents were not in a travel status while residing in their permanent residence and there is no provision in the Joint Travel Regulations (JTR) to allow for dependent *per diem* entitlements under the circumstances. DFAS stressed that if the JTR does not say something can be reimbursed, then it cannot be reimbursed as a travel claim. DFAS also cited the provisions of the JTR concerning travel status and deferred dependent travel. DFAS concluded that since the member's dependents did not complete their PCS move to the DCR until August 15, 2020, they were not in a travel status while they remained at their permanent residence. DFAS found no authority for reversing the collection of the erroneously paid M&IE.

In the appeal decision, the DOHA attorney examiner explained that payment may only be made for an expense authorized by statute and regulation. He found that although the member was not entitled to be paid dependent M&IE, she was entitled to receive basic allowance for housing (BAH) for her dependents on the basis that she was authorized to delay the departure of her dependents. He cited the provision of the Department of Defense Financial Management Regulation (DoDFMR) concerning the member's BAH entitlement. Under the DoDFMR Volume 7A, Chapter 26, paragraph 261007, entitled *Dependent Travels Before or After the Service Member*, BAH is paid to a member based on the location at which a dependent maintains a permanent residence or the old PDS. The attorney examiner noted that the member was paid \$18,826.00 in BAH on August 1, 2021. Therefore, he concluded that since the member was authorized to have her dependents remain at her old duty station and received BAH pursuant to the DoDFMR provision, she was not entitled to the *per diem* for her dependents at her old duty location.

In the member's reconsideration request, she states that she made the decision to delay her dependents' PCS move primarily because they had not yet received their visas and passports. She made that decision on January 26, 2020, after her HHG and POV were shipped. She was advised by her unit's finance office that the change of departure was allowed. She requests that the appeal decision determination that her dependents were in a delayed travel status be reversed and that their status be "an awaiting transportation status." She states that the only reason she sought an amendment to her orders was to find a way to support her dependents during her PCS, and the amended orders did not come through until her dependents actually moved. She further states that the only reason that her dependents had a place to stay was because she owned the house, and she expected to rent the house once they had departed and their HHG had shipped. She acknowledges that she did receive back pay for BAH but did not receive it until after she was issued the July 2022 debt notification for \$30,146.50. Finally, she requests that DOHA consider the lack of clarity of the circumstances during the time of her dependents' PCS. She states that she is planning to retire soon, and it would be a lot easier to take on a debt for BAH in the amount of \$18,826.00, than the debt for M&IE in the amount of \$30,146.50.

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). 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. 2021-CL-020301.2 (July 22, 2021) and DOHA Claims Case No. 2017-CL-073104.3 (August 5, 2019).

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.

Paragraph 010203 of the January 2020 version of the JTR provides the start and end time for travel status. Allowances are payable only to travelers when in a travel status. For a PCS, the status begins when a traveler leaves the PDS, residence, or office, or when the traveler detaches from or signs out of a unit or agency. Under JTR ¶ 010203-A, a travel status includes, in pertinent part, necessary delays while awaiting further transportation after travel status begins and other circumstances determined jointly by the Secretaries concerned before, during, or after an occurrence that constitutes a travel status.

Under JTR ¶ 010206-A, travel authorizations and orders cannot be retroactively modified to increase or decrease an allowance after the travel is completed.

Entitlements for PCS travel are set forth in the JTR under Chapter 5. Dependent PCS travel entitlements are found in paragraph 0504. Paragraph 050401 of the JTR requires that dependent travel must be because of the member's PCS and not for personal reasons. JTR ¶ 050404, *Deferred Dependent Travel*, provides the following:

If a Service member chooses not to move a dependent when he or she is authorized to do so, the dependent travel and transportation allowances for an eligible dependent are payable during a subsequent PCS, as indicated below.

A. The allowance is for the actual travel to the new PDS. However, the allowance is limited to the greater of the distances from one of the following locations to the new PDS:

1. Home of record (HOR) or place where last entered or called to active duty (PLEAD), unless the dependent was moved to the HOR or PLEAD in connection with a move to a non-PDS location.
2. Designated place.
3. PDS from which the Service member elected not to move the dependent.

4. Last PDS.

B. Any interim PCSs for which the Service member did not claim dependent travel and transportation allowances are ignored.

On March 23, 2020, the Department of Defense issued a memorandum entitled *Military Personnel Guidance for DoD Components in Responding to Coronavirus Disease 2019*. It provided the following:

Members and dependents performing a PCS who receive orders to delay their travel after detaching or departing the old PDS, who are authorized to remain in place, to temporarily return to the old PDS, or to move to an alternate location, may be authorized per diem during periods while awaiting transportation.

In this case, neither the JTR nor the above-captioned memorandum provide *per diem* in the circumstances in which this member finds herself. The original delay to her dependents' PCS move was due to personal reasons. The member wanted to wait until her children finished the academic semester, delaying the initiation of their PCS travel until March 2020. The member performed her own PCS in January 2020, and her HHG and POV were delivered during that month. The member's dependents never departed their permanent residence and were not in a travel status until August 15, 2020. Therefore, they were not considered "in an awaiting further transportation after travel status begins" until August 15, 2020.

In error, the member was paid \$30,146.50 for M&IE for her dependents. Since she was not entitled to receive M&IE for her dependents during this period, DFAS properly issued her a notification of indebtedness, less than three weeks after she received payment. As detailed in the appeal decision, the member was entitled to receive BAH for her dependents while they continued to reside at the family's residence. The member acknowledges receiving \$18,826.00 in BAH in August 2021. We note that generally when a member is overpaid and placed in debt for *per diem*, but later determined to be entitled to BAH, DFAS will offset the amount of debt by the amount of the member's entitlement. See DOHA Claims Case No. 2012-WV-062201.2 (March 15, 2013). From the record in this case, it is unclear if DFAS offset the debt, or the member just received the full amount of her BAH entitlement. She expresses upon reconsideration that she would rather be placed in debt for the BAH than the M&IE. However, she was not entitled to receive the M&IE. If she wishes to pursue the matter through a request for waiver of her indebtedness, she may do so by filing a DD Form 2789, *Remission/Waiver of Indebtedness Application*, with DFAS. That application and more information on pursuing a waiver request can be found online at <https://www.dfas.mil/waiversandremissions>.

Conclusion

The DOHA Claims Appeals Board upholds the appeal decision dated October 13, 2022, 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
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