

DATE: August 30, 2023

In Re:)
)
 [REDACTED]) Claims Case No. 2023-CL-040701.2
)
 Claimant)
)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The fundamental rule in adjudicating a claim is that payment may be made only for an expense authorized by statute or regulation.

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. 2023-CL-040701, dated May 30, 2023. In that decision, DOHA denied the member's claim for *per diem* and lodging because such payments are prohibited by pertinent regulations.

Background

The member was stationed outside the continental United States (OCONUS). On June 24, 2021, he received permanent change of station (PCS) orders to a new permanent duty station (PDS), Shaw Air Force Base (AFB), South Carolina, to report no later than January 31, 2022, for himself and his family. On June 28, 2021, his orders were modified to include temporary duty (TDY) en route at Luke AFB, Arizona, to attend a requalification training. The duration of the training was 163 days, with a start date of July 6, 2021, and a graduation date of December 16, 2021.

On October 19, 2021, the member's orders were amended to authorize full meals and incidental expenses (M&IE), and again on November 24, 2021, to authorize the use of a compact rental vehicle. The member filed for and received partial payments of \$29,318.28 during the TDY period. After the member completed his training, he arrived at Shaw AFB, his new PDS, and filed his final PCS settlement voucher. At that time, the finance office discovered that since the Luke AFB training was in excess of 139 days, Luke AFB became the member's PDS, and not his TDY station. On the final settlement voucher, the finance office allowed the member's TDY entitlements through the 139th day and noted that Secretarial approval was required to pay the remainder of the member's expenses for his travel to Luke AFB.

The Defense Finance and Accounting Service (DFAS) reviewed the member's claim and determined that his orders erroneously authorized TDY entitlements for the duration of the training course at Luke AFB. DFAS based this determination on the Joint Travel Regulations (JTR) which provide that a course with a scheduled duration of 140 days or more at one location is a PCS. DFAS found that an exception to the rule provides that the Secretary concerned may exercise his/her authority to allow a course with a scheduled duration of 140 days or more (but not more than 181 days), to be attended and completed in a TDY status, instead of a PCS status. However, DFAS found that the member's course was not subject to an exception by the Secretary concerned. DFAS also verified with the Air Force that there was no other waiver or exception applicable to the course that the member attended. DFAS denied the member's claim for an additional \$4,919.91 in reimbursement and determined that the member should be placed in debt in the amount of \$35,398.74 for the TDY reimbursements he had already received.

The member appealed DFAS's decision to DOHA. In his appeal, he provided two memorandums issued by the Secretary of the Air Force which granted waiver for identified classes to be performed in a TDY status. The first memorandum, dated February 17, 2017, authorized the requalification course the member took at Luke AFB to be conducted in a TDY status. However, the second memorandum, dated January 2, 2021, did not identify the requalification course the member took. The member stated that it was unreasonable and inequitable to assess a debt of \$35,398.74 against him when he was following orders published by the Air Force Personnel Center (AFPC).

In the DOHA appeal decision, the attorney examiner upheld DFAS's denial of the member's claim. The attorney examiner explained that the claim was not allowable under the JTR. He stated that a travel order may only contain authority for travel and transportation allowances provided within the JTR, and if there is any conflict between a travel order and the JTR, the JTR prevails. He cited Table 1-6, Rule 2, of JTR ¶ 010206-B. In that rule, training courses that are scheduled to last 139 days or fewer are considered TDY; and if the scheduled duration is 140 or more days, then it is a permanent duty assignment under JTR ¶ 032201. Additionally, the attorney examiner explained that under JTR ¶ 032201-A-3, the Service concerned (the authority may not be delegated) may authorize a designated course scheduled to last 140 or more days (20 weeks), but not 181 or more days to be a TDY instead of a PCS. The attorney examiner found that although the Secretary of the Air Force issued a memorandum entitled *Temporary Duty Waiver for Formal Training Courses* on January 2, 2021, that memorandum did not list the training course the member attended. As for the member's concern about being indebted for the \$35,398.74 already disbursed to him, the attorney examiner

explained that if the member was issued a debt notification, he would be given certain due process rights including the right to request waiver of the debt.

In his request for reconsideration, the member contends he complied with his orders as issued and published by the AFPC. He believes that his orders referenced the Secretary of the Air Force's memorandum dated February 17, 2017, since the second memorandum dated January 2, 2021, was published the same year of his TDY to Luke AFB. He states that when his TDY claim was denied by the finance office at Shaw AFB, he was advised by Comptroller Squadron personnel to pursue the waiver for the course to be identified as a TDY with DFAS. When he pursued the matter with DFAS, DFAS denied his claim and further determined that he should be placed in debt for the \$35,398.74 he had already been paid. He reiterates he relied on his orders and he should not be required to pay for hotel costs required for living, rental car costs required to commute to formal training, and M&IE due to executing orders as published, signed, approved, and authenticated. He states that if DFAS and the Air Force do not find a way to resolve the debt that has now been established against him, his family will experience severe financial hardship. He states that it is unequivocally and unreasonably wrong to penalize his family, his wife, and his children for a systemic and departmental error committed by the Air Force.

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. *See* DOHA Claims Case No. 2018-CL-062601 (April 8, 2019); and DOHA Claims Case No. 2017-CL-050201.2 (September 25, 2017). Under title 37, United States Code, the JTR implements regulations for travel entitlements for uniformed service members, and as such, it has the force and effect of law. *See* DOHA Claims Case No. 2018-CL-062601, *supra*.

Paragraph 010206 of the December 2021 version of the JTR provides that a travel order may only contain authority for travel and transportation allowances provided within the JTR. As set forth under JTR ¶ 010206-B, training courses that are scheduled to last 140 or more days are considered a permanent duty assignment under JTR ¶ 032201. Under JTR ¶ 032201-A-1, courses with a scheduled duration of 140 or more days (20 weeks) are PCSs, and the course location is the member's PDS. The exception to that status is set forth under JTR ¶ 032201-A-3, which provides in pertinent part the following:

3. Exceptions to Status. The Secretary concerned (this authority cannot be delegated) may authorize a designated course scheduled to last 140 or more days (20 weeks), but not 181 or more days to be attended and completed in a TDY status instead of a PCS status.
 - a. Requests for such action must be forwarded through Service Command channels to the Secretary concerned and include the course number, description, length, school location, specific Service of each

attendee, number of attendees who traditionally return to the previous PDS, and written justification for TDY instead of PCS.

In this case, since the member's course at Luke AFB was over 140 days in length at the start of the course, his travel and attendance at the course became a PCS and Luke AFB became his PDS. Therefore, the member is not entitled to receive any *per diem* while stationed at Luke AFB, his PDS. Unfortunately, the Secretary of the Air Force's memorandum signed on January 2, 2021, approving a waiver of the requirement to allow members to attend training courses in a TDY status instead of a PCS status, did not list the course the member attended. The memorandum specifically states at its conclusion that it supersedes the memorandum dated February 17, 2017, and will be reviewed and updated biennially.

Regrettably, this Office must render its decision in accordance with relevant statutes and regulations. See DOHA Claims Case No. 07022702 (March 7, 2007) (reserve member not entitled to *per diem* while performing active duty training for 140 or more days). However, the member may wish to consider other remedies that may be available to him. As noted by the attorney examiner in the appeal decision, the member has a right to request waiver of his debt under the authority of 10 U.S.C. § 2774. If the member wishes to pursue waiver of this debt, he should submit his request for waiver of indebtedness to DFAS. He may make the request by submitting a DD Form 2789, *Waiver/Remission of Indebtedness Application*, to DFAS. Information for submitting a request for waiver may be found on DFAS's website at <https://www.dfas.mil/waiversandremissions/>. The member may also request remission through the Air Force Remissions Board (SAFRB) under the authority of 10 U.S.C. § 9837. Under that statute, the Secretary of the Air Force, operating through the SAFRB, may have remitted or cancelled any part of an indebtedness of a member incurred while serving as a member of the Air Force. Information on the process for seeking a remission with the SAFRB is outlined on the Air Force Review Boards Agency's website at <https://afrba-portal.cce.af.mil/>. However, we do note that the Agency's website does caution that a debt will not be remitted or cancelled by the SAFRB if a member has previously received a final determination for the same debt under the authority of 10 U.S.C. § 2774.

Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision dated May 30, 2023. In accordance with DoD Instruction 1340.21 ¶ E7.15, 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: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board