

DATE: May 15, 2024

In Re:)

[REDACTED])

) Claims Case No. 2023-CL-080101.2

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.

The Government is not bound by the erroneous acts of its agents, even when committed in the performance of their official duties. Neither misrepresentation by a transportation officer nor misinformation provided by military officials provide a legal basis for reimbursement of additional travel and transportation costs.

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. 2023-CL-080101, dated December 6, 2023.

Background

The record shows that on July 30, 2020, the member was issued orders authorizing his son to travel and ship unaccompanied baggage from Anchorage, Alaska, to St. George, Utah, for the purpose of attending college. The orders stated in pertinent part the following:

The Solider is responsible for arranging transportation through the local transportation office and for obtaining a statement of non-availability (if

applicable). If transportation is obtained from other sources, the Soldier may not be reimbursed.

The member's orders further stated:

You may either ship unaccompanied baggage (350 pound maximum) or place the unaccompanied baggage in temporary storage; however, only one option may be selected for this fiscal year.

In August 2020, the member's son drove his privately owned vehicle (POV) from Alaska to Utah. On September 1, 2020, the member submitted a DD Form 2278, *Application for Do It Yourself Move and Counseling Checklist*, to his installation transportation officer (TO), in order to request a Do It Yourself (DITY) move for his son's travel. Also, on September 1, 2020, the member submitted a DD Form 1351-2, *Travel Voucher or Subvoucher*, and a *Personally – Procured Move (PPM) Checklist and Expense Certification* to claim his son's PPM and the expenses associated with his travel from Alaska to Utah.

On March 30, 2021, the member was issued orders authorizing his son to travel from Utah to Alaska, on May 9, 2021. The orders again provided the special travel requirements set forth above. On April 19, 2021, the member signed a DD Form 2278, requesting a DITY move for his son. The member's son completed his travel from Utah to Alaska in May 2021. The member submitted his DD Form 2278 to his TO on June 3, 2021. He also submitted the DD Form 1351-2 and PPM Checklist and Expense Certification to claim his son's PPM and other expenses with his travel from Utah to Alaska.

Upon submission of the member's travel settlement vouchers to the Defense Finance and Accounting Service (DFAS) - Rome, reimbursement for the travel was initially paid. However, in reviewing the travel reimbursements, DFAS – Rome then determined that the member's travel claim was paid in error. Although numerous errors occurred in correcting the vouchers, DFAS – Rome then issued administrative travel vouchers which resulted in the member being placed in debt to the government.

DFAS – Enterprise Solutions and Standards Travel Pay determined that the Joint Travel Regulations (JTR), Chapter 5, paragraph 050816, Dependent Student Travel, does not authorize PPMs. Therefore, DFAS denied the expenses associated with the member's son's PPMs, including no reimbursement for any gasoline purchases on the two trips. DFAS further determined that although reimbursement for POV travel is permissible under the JTR, when a traveler uses a POV instead of the authorized transportation type (other than a government vehicle), reimbursement is limited to the constructive cost of the authorized transportation type. Therefore, miscellaneous reimbursable expenses associated with driving the POV and incurred during travel, such as parking and tolls, are not authorized for reimbursement. DFAS determined that the lesser cost of the travel, the constructed cost of the airfare, was reimbursable.

In the member's appeal, he asserted that the JTR, Chapter 5, paragraph 051502, Personally Procured HHG [household goods] Transportation, subparagraph C, supported the use

of the PPM for dependent student travel and therefore, he was entitled to be reimbursed for 200 pounds of unaccompanied baggage and gasoline purchases on his son's two trips.

In the DOHA appeal decision, the attorney examiner sustained DFAS's denial of the member's claim. He found no authority in the JTR authorizing reimbursement for his son's transportation of unaccompanied baggage in his POV.

In the member's reconsideration request, he states that he understands that there is no authority in the JTR that allows reimbursement for his son's transportation of his unaccompanied baggage. He states that during the summer prior to his son's move, his son was putting together his unaccompanied baggage to move to college in Utah. As his son was intent on driving in his POV, the member told his son that his baggage would likely not fit in his car unless he purchased a cargo box to place on top of the vehicle. He told his son that he would ask the transportation office for the pickup of 350 pounds of his son's unaccompanied baggage so that movers would transport it. The member states that when he visited his transportation office, they noted the challenges that moving companies were facing in pickup and delivery times because of the circumstances surrounding COVID and its effect on logistics. The member told his transportation office that instead of enduring the likely delay in using a mover, his son would instead just load everything in his POV. He states that the transportation office recommended that his son move the unaccompanied baggage via a PPM. He told his transportation office that he had not thought of this as an option and would complete the paperwork needed to move 350 pounds of the unaccompanied baggage via a PPM. The member states that since the transportation office approved this method, he never questioned the authority of it. He states that the errors which led to using the PPM were not his. Therefore, he requests that DOHA consider that the transportation office authorized this mode of transportation and that he not be penalized for that office's mistake.

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 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. The JTR in effect at the time of shipment of the baggage provided for a 350 pound net weight

limit for unaccompanied baggage shipment for a student dependent performing educational travel. The JTR ¶ 050816, Dependent Student Travel, specifically states the following:

D. Dependent Student Transportation to a School in the United States

9. Unaccompanied Baggage. Unaccompanied baggage of up to 350 pounds may be transported for each authorized trip between the school and the Service member's PDS. The Service member is financially responsible for any overweight unaccompanied baggage during educational travel.

JTR Appendix A defines unaccompanied baggage as a member's necessary items shipped by an expedited mode to a temporary duty travel (TDY) or permanent change of station (PCS) location. Although JTR ¶ 051502, Personally Procured HHG Transportation, does allow a member the option to personally arrange the transportation of their HHG and be reimbursed a PPM, this section is applicable when moving is necessary due to a permanent change of station.

In this case, the member's orders were issued for his son to perform student dependent travel under the authority of JTR ¶ 050816. Under that paragraph and the member's orders, the member was authorized shipment of his son's accompanied baggage of up to 350 pounds, transported for each authorized trip between the school and the member's permanent duty station.

Although the member was given incorrect information by the transportation office concerning his son's travel, absent specific authority, the Government may not pay the resulting expenses to which the member was not entitled to receive under statute and regulation. *See* DOHA Claims Case No. 2017-CL-042501.2 (July 27, 2017); DOHA Claims Case No. 2010-CL-060201.2 (July 29, 2010); DOHA Claims Case No. 08122401 (January 8, 2009); and DOHA Claims Case No. 98012620 (March 20, 1998).

Finally, if the member wishes to seek waiver of his indebtedness resulting from the erroneous payment of travel reimbursements made to him, he may do so under the authority of 10 U.S.C. § 2774. Under that statute, the authority to waive a debt applies in cases where the collection of a claim against a member arising out of an erroneous payment of travel and transportation allowances would be contrary to equity and good conscience. The member may pursue this remedy by filing a DD Form 2789, *Waiver/Remission of Indebtedness Application*, with DFAS. More information on filing a waiver request can be found on DFAS's website at <https://www.dfas.mil/waiversandremissions>.

Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2023-CL-080101, 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
Administrative Judge
Chair, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Administrative Judge
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Claims Appeals Board