

DATE: June 26, 2024

In Re:)

[REDACTED])

) Claims Case No. 2023-CL-081503.2

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.

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-081503, dated November 28, 2023.

Background

The record shows that on October 19, 2022, the member, a reservist, was issued Temporary Change of Station (TCS) orders to active duty authorizing her to travel from Slidell, Louisiana, to her home station in Orlando, Florida, for a duration of 365 days. She was to report to her home station on December 5, 2022. Her orders also provided for travel to the mobilization station at Fort Hood, Texas, on December 8, 2022. The orders stated that government lodging would be provided at no cost to the member. The orders further directed the member to obtain a statement of non-availability (SNA) if lodging was not available at the installation and with a SNA, the member would be authorized *per diem* in accordance with the Joint Travel Regulations (JTR). On December 5, 2022, the member received a SNA stating that housing and messing were not available at the installation in Orlando during the period December 5, 2022, through December 5, 2023.

The member had difficulty securing commercial lodging at hotels in Orlando within the *per diem* rate due to the rates fluctuating seasonally. Therefore, she decided to search for long-term lodging. A fellow member recommended she use a third-party vendor who bundles rent, furniture, and utilities into one monthly payment. With the help of a realtor, the member entered into a one-year residential lease agreement of a single-family home (three bedrooms, 2.5 baths and 1,659 square foot townhouse) beginning December 30, 2022, and ending November 30, 2023, with a landlord for \$2,350.00 per month without utilities included in the rent. On December 18, 2022, the member signed a contract with a third-party vendor. In that contract, the member agreed to pay \$3,819.00 per month to the vendor and the vendor would in turn pay the member's landlord the monthly rent of \$2,350.00. The contract reflects that the member was being charged over the monthly amount for rent for utilities (water and electric), corporate rental items (furniture), rent processing fees, corporate service charges, and sales tax.

The member submitted her monthly vouchers for approximately \$3,870.36 per month during the period January 2023 through May 2023, and was reimbursed by scheduled partial payments (SPPs) through the month of May 2023. In April 2023, she amended her travel authorization to include emerging temporary duty requirements and leave she was planning to take. After review of the member's authorization, on May 8, 2023, her administrative officer (AO) informed her that the fees associated with the third-party vendor would no longer be reimbursable and that she would need to adjust her *per diem* rates beginning April 8, 2023. The member amended her travel authorization but requested review of her allowances.

On June 13, 2023, the Army Installation Management Command (IMCOM) denied the member's claims for reimbursement for miscellaneous monthly lodging fees associated with the vendor's charges for the rent processing fees (\$185.00 per month) and the corporate service charges (\$188.02 per month). IMCOM found that these charges were not reimbursable because the contract the member entered into with the vendor was for a voluntary service not mandated by the Army, and the vendor was not affiliated with the landlord providing the lodging accommodations. IMCOM also raised concerns about the propriety of reimbursing the member for the charges associated with furniture rental and utilities. For the furniture rental, IMCOM found that the member was on an unaccompanied tour, so the furniture charges (approximately \$636.00 per month) should be reevaluated once an itemized cost for each furniture item is provided by the member. For the utilities, since the member was charged with a flat rate of \$470.00 per month with no itemized receipts, IMCOM found that those charges should also be reevaluated once the member provides itemized receipts reflecting services for water and electric. IMCOM attached to its decision their current Third-Party Vendor Business Rule, vetted by the IMCOM Judge Advocate General (JAG) Division. Under that rule, authorized reimbursable expenses must include receipts from the actual vendor providing the service; third-party vendor documentation is not considered a valid receipt; and as set forth in the Joint Travel Regulations, receipts must be itemized. The rule also listed non-reimbursable expenses which included in pertinent part:

Service (Corporate) FEES that are optional- Using a 3rd party vendor is considered "optional" service and therefore these fees are not reimbursable.

Transaction Fees for Personally Procured Lodging that are optional- Using a 3rd party vendor is considered an “optional” service and therefore these fees are not reimbursable. – If Soldiers are not using the integrated lodging program (ILP) or government lodging it is considered personally procured and have entered an “optional” contract therefore transaction fees would not be reimbursable.

On July 17, 2023, the member appealed IMCOM’s determination. In that appeal, she detailed the issues she had securing lodging in Orlando in December 2022. She stated that she had to move hotels because of the rates fluctuating above the *per diem*. When a fellow member recommended the third-party vendor who bundles rent, furniture and utilities into one monthly payment, all within the respective *per diem* rate, she found this would help simplify things. She stated that other members had used this vendor previously. She stated that she created her authorization on January 7, 2023, and it was approved with some adjustments on January 24, 2023, by an IMCOM budget analyst. She stated that if she had been advised of the third-party vendor rules at that time, she would not have used the service. She stated that she learned other members with previously approved authorizations were notified in June 2023, to amend their authorizations to reflect the new guidance set forth in IMCOM’s third-party vendor rules.

On August 7, 2023, the Defense Finance and Accounting Service (DFAS) sustained IMCOM’s denial of the member’s claim for reimbursement of miscellaneous monthly lodging fees. DFAS found that under the JTR Table 2-16, *Miscellaneous Reimbursable Expenses Associated with Lodging*, miscellaneous expenses associated with lodging are reimbursable if they are not optional and the AO authorizes/approves the reimbursement for them. DFAS determined that this table did not apply to the member’s claim since it was optional for the member to sign with the third-party vendor to pay her rent and utilities for her. As for the member’s utilities costs, DFAS found that the vendor charged the member \$316.00 for her electric and \$154.00 for her water and sewer use, and if the member exceeded those monthly charges, the vendor would charge her an overage fee. However, DFAS found that the vendor did not reference the situation in which the member’s usage is lower than the monthly allowances being charged. Therefore, DFAS concluded that in order for the member to be reimbursed for her utilities, she must show a valid receipt in her name, reflecting the monthly cost of the utilities. DFAS found that the third-party vendor receipts did not reflect her actual monthly utility expenses. DFAS also upheld IMCOM’s determination that the furniture rental through the third-party vendor was questionable considering the member was on an unaccompanied tour. DFAS found that part of the furniture rental included the rental of two beds. DFAS acknowledged that the JTR permits reimbursement of appropriate and necessary furniture rental, but concurred with IMCOM that it was not appropriate and necessary for the member to rent two beds.

In the DOHA appeal decision, the attorney examiner upheld DFAS’s denial of the member’s claim for additional reimbursement for her miscellaneous lodging fees. The attorney examiner found Rule 2 of the JTR Table 2-16, dated January 1, 2023, to be controlling in the adjudication of the member’s claim. That rule states that if certain fees are not optional, then the AO may authorize/approve reimbursement for them. The attorney examiner found that since the two fees for rent processing and the corporate service charges were optional, they were not reimbursable under the JTR. Those fees were not necessary expenses for renting the lodging but

were optional expenses the member undertook as a convenience to simplify paying the monthly bills associated with her lodging.

In the member's reconsideration request, she states that the IMCOM approved reimbursement of her additional miscellaneous lodging fees on January 24, 2023, and later denied reimbursement for the rent processing fees and the service fees on May 8, 2023, deeming those fees as optional expenses. She acknowledges that the rent processing fees are not reimbursable under the JTR, citing Rule 12 of Table 2-16 of the JTR, dated January 1, 2023. That rule states that "if a transaction fee for personally procured lodging is incurred and the traveler does not use an electronic travel system or an available travel management center (TMC), then reimbursement is not authorized." However, she contends that the Rule 14 of Table 2-16, is the controlling section for the reimbursement of the service fees she is seeking. That rule states that "if the traveler is authorized the use of nonconventional lodging, then the service fee is a reimbursable expense." She states that the JTR defines "nonconventional lodging" as a single-family residence not in a commercial facility. However, she does not provide a JTR citation setting forth that definition. She notes that the JTR was revised on November 1, 2023, and Table 2-16 now includes a new rule, Rule 15, that states "if the traveler is authorized or approved to use nonconventional lodging, then a reasonable service fee, limited to the amount of the fee charged by the TMC when required to make manual reservations, is a reimbursable expense." She states that the update to Table 2-16 allows reimbursement up to the fee associated with the city booking office. However, she maintains that since her travel authorization concluded on September 30, 2023, the version of the JTR dated January 1, 2023, controls the reimbursement of the service fees.

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).

No authority exists for an official of the United States to authorize entitlements which are precluded from being paid by statute and regulation. The travel and transportation entitlements of a member of the uniformed services are for computation under the statutes and regulations in effect at the time the travel is performed. *See* DOHA Claims Case No. 2017-CL-100303.2 (April 30, 2018); and DOHA Claims Case No. 06010605 (January 31, 2006).

A member's entitlement to travel and transportation allowances is governed by title 37 of the U.S. Code. Under 37 U.S.C. § 451(6), the term "miscellaneous expenses" means authorized

expenses incurred in addition to authorized allowances during the performance of official travel by an authorized traveler. 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 the member's travel is dated January 1, 2023. Chapter 2 of the JTR concerns standard travel and transportation allowances. The three major types of standard travel and transportation allowances are transportation, *per diem*, and miscellaneous reimbursable expenses. See JTR ¶ 0201. Although the JTR categorizes miscellaneous expenses as one of the of three major types of standard travel and transportation allowances, they are also discussed as part of the transportation section or the *per diem* allowance section. Miscellaneous expenses that are neither transportation-related nor *per diem*-related may require AO authorization or approval. See JTR ¶ 020103.

If a member cannot book commercial lodging using the travel management center (including the electronic travel system), then the member must book directly with the commercial lodging facility (including the hotel's online Web site). See JTR ¶ 020303-A.3. If a member obtains lodging through an online booking agent, reimbursement is authorized only when the member provides a documented itemized receipt for room costs from the hotel or online booking agent showing the charges for daily hotel room, daily hotel taxes, and daily miscellaneous fees. See JTR ¶ 020303-A.4. If no commercial lodging facility is available at the Temporary Duty Assignment (TDY) location or a room shortage exists because of a special event, remoteness, or shortage, the cost of nonconventional lodging (obtained in other than a commercial facility) may be authorized or approved when the traveler provides a written explanation of non-availability acceptable to the AO. See JTR Rule 14 of Table 2-15, *Lodging Reimbursable Rules*.

Table 2-16 of the JTR is entitled *Miscellaneous Reimbursable Expenses Associated with Lodging*. Under Rule 2 of that table, if certain fees are not optional, such as tourism, safe, service, or resort fees, then the AO may authorize reimbursement for them. Under Rule 12, if a transaction fee for personally procured lodging is incurred and the traveler does not use an electronic travel system or an available TMC, then reimbursement is not authorized. Under Rule 14, if a traveler is authorized the use of nonconventional lodging, then the service fee is a reimbursable expense.

In the member's case, Table 2-16 clearly states that the AO may only authorize reimbursement of non-optional fees, such as tourism, safe, service, or resort fees. The member's use of a third-party vendor for convenience to simplify paying the monthly bills associated with her lodging was optional. The resulting fees for rent processing and corporate service charges are not considered mandatory fees because they were not necessary expenses for renting lodging. Therefore, they are not reimbursable expenses under the JTR.

As for the member's reliance on Rule 14 of Table 2-16, we see no definition in the JTR for nonconventional lodging. However, whether or not the lodging used by the member is properly categorized as "conventional" or "nonconventional" is of no consequence in this case for two reasons. First, we find that the provision at JTR Rule 2 of Table 2-16 prohibits reimbursement of optional fees and that provision does not rely on the distinction between conventional and nonconventional lodging. Second, even if we were to find that the member's

lodging was nonconventional, she was not authorized to use it. As set forth under Rule 14 of Table 2-15, only if no commercial lodging facility is available at the TDY location or a room shortage exists because of a special event, remoteness, or shortage, then the cost of nonconventional lodging (obtained in other than a commercial facility) may be authorized or approved when the traveler provides a written explanation of non-availability acceptable to the AO. Here, commercial lodging was available, the member just chose to rent a townhouse from the property owner and use a third-party vendor to bundle expenses of payment for simplicity and convenience. In addition, the member did not provide any such written explanation of the non-availability or of a room shortage to the AO in order to be authorized nonconventional lodging.¹

The fact that the AO authorized reimbursement to the member for the months prior to May 2023, and may have authorized reimbursement to similarly situated members does not provide a legal basis to continue reimbursement under the applicable regulations. In addition, a claim cannot be allowed on the basis of erroneous payments that were made to other members in the same situation. *See* DOHA Claims Case No. 2015-CL-082607.3, *supra*. While we sympathize with the circumstances of the member and her reliance on the advice of another service member, we have no authority to allow payment of further expenses, since the member already received the amount authorized by the laws in effect at the time the travel was performed. *See* DOHA Claims Case No. 2017-CL-050201.2 (September 25, 2017); DOHA Claims Case No. 2012-CL-070601.4 (August 31, 2015); and DOHA Claims Case No. 2014-CL-091601.2 (December 30, 2014). In addition, although the JTR provisions may have changed since the time of the member's travel, the principle remains that the JTR cannot be applied to change travel allowances retroactively, only prospectively. *See* DOHA Claims Case No. 06103007 (November 14, 2006).

¹We do note that conventional lodging includes commercial lodging, which is what the member used when entering into a lease with the property owner. Nonconventional lodging seems to encompass other types of lodging when there are no conventional lodging facilities in the TDY area, such as remote areas, or when conventional lodging facilities are in short supply because of an influx of attendees at a special event (*e.g.*, World's Fair or international sporting event). Such lodging includes college dormitories or similar facilities or rooms not offered as commercial lodging but made available by area residents in their homes. *See* GBCA No. 16770-TRAV (February 24, 2006); GBCA No. 14957-RELO (September 17, 1999) and B-238093, Aug. 28, 1990 (these cases involve federal civilian employee travel claim appeals).

Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision in DOHA Claim No. 2023-CL-081503, 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: David F. Hayes

David F. Hayes
Administrative Judge
Member, Claims Appeals Board