



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203-1995



DATE: May 23, 2025

In Re:

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Claimant

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Claims Case No. 2021-CL-030501.3

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The well-established general rule is that a claim may be allowed only for an expense authorized by statute or regulation. Further, 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 Department of Defense is liable under the law for the amount claimed. 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).

DECISION

A member of the U.S. Army Reserve requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2021-CL-030501.2, dated February 10, 2025.

Background

The record reflects that the member, a warrant officer in the United States Army Reserve, was living in Alaska when he was selected to attend all three phases of the Warrant Officer Basic Course (WOBC) in Georgia. The Army notified the member of his selection over the course of three course verification emails, one for each phase in which he was to participate: Phase 1 during the period October 21, 2020, through December 16, 2020; Phase 2 during the period January 4, 2021, through March 4, 2021; and Phase 3 during the period March 4, 2021, through June 25, 2021. On September 25, 2020, the member requested a permanent change of station

(PCS) to the location of the WOBC he was to attend in Georgia. In that request, he stated that he had already leased quarters in Georgia; had paid a security deposit for that lease; was in the process of vacating his current quarters in Alaska; and those quarters had already been leased to the next tenant. The Warrant Officer Course Program Manager denied the member's request on September 28, 2020. The Program Manager advised the member that there was no authority for a PCS for the member to Georgia in October 2020. The Program Manager also advised the member that there was no provision to pay the member, a reserve component soldier, active duty pay for the time between Phases 1 and 2 of the WOBC. The Program Manager stated that she would issue the member orders for a PCS to Georgia for Phases 2 and 3 and requested that he update his new address in Georgia with his unit prior to the Army publishing his orders for Phase 1 of the WOBC.

On October 2, 2020, the Army issued the member Active Duty Training School (ADTS) orders from his home of record in Alaska, directing him to perform 58 days of active duty training (ADT) for the WOBC in Georgia reporting not later than October 21, 2020. On December 7, 2020, the Army issued the member ADTS orders from his home of record in Alaska, directing him to perform 173 days of ADT for the WOBC in Georgia reporting not later than January 4, 2021. The December 7, 2020 orders authorized and directed a PCS for the member. On March 5, 2021, the member submitted a PCS claim directly to our office, the Defense Office of Hearings and Appeals (DOHA). Our office advised the member that his claim had to be submitted to the Defense Finance and Accounting Service (DFAS). On May 14, 2021, DFAS advised the member that they could not submit an appeal of the claim to DOHA because he had not submitted a travel claim to their office. DFAS advised the member to submit his claim to his paying office, and if all or part of the claim was denied, he could then appeal the decision through DFAS to DOHA.

On June 25, 2021, the member received a certificate for having attended the WOBC during the period October 21, 2020, through June 25, 2021. On September 28, 2023, DFAS advised the member that after he had submitted his PCS settlement voucher, he was paid PCS allowances for Phases 2 and 3 of his WOBC, which qualified as a PCS. DFAS explained that Phase 1 was a TDY assignment, and that the member had not been denied TDY expenses because he had yet to submit a TDY travel settlement voucher. DFAS also explained that while the Army can retroactively amend travel orders to reflect the original intent of the orders, there was nothing to show that the original intent was for the member to have been authorized a PCS starting October 21, 2020. DFAS stated that their office lacked the authority to amend the member's travel orders, *i.e.*, backdate his PCS to include Phase 1 of the WOBC, in order to allow his claim. Notably, in an effort to assist the member, DFAS stated that they contacted the Army Financial Management Command and the Army G-1. However, DFAS advised the member that both entities confirmed that the orders were correct as written.

The member appealed DFAS's denial of his claim to DOHA. In the appeal, the member stated that his claim was not for travel expenses, but for active duty pay. The member maintained that under the Joint Travel Regulations (JTR) an ADT tour of less than 140 days at one location is a TDY, while an ADT tour of 140 or more days at one location is a PCS. The member argued that the Army erred in issuing him two orders for the period he attended the WOBC. He requested the revocation of the TDY order and the amendment of the PCS order to

start his PCS tour on October 20, 2020, so that he would receive active duty pay for the time he attended the WOBC.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the claim. The adjudicator analyzed the two orders in question and found no error or omission in either of the orders at issue, and no grounds to retroactively amend those orders.

In his reconsideration request, the member states that the DOHA appeal decision is veritably arbitrary. He questions the statutory and regulatory basis for the appeal decision denying his claim. He states that the adjudicator fails to differentiate and acknowledge the two separate, yet inextricable and critically relevant prongs of intent as they relate to the discharge of the Authorizing Official's statutory duties and the subsequent issuance of competent orders. He argues that the WOBC was a single course that ran from October 21, 2020, through June 25, 2021. He states that the sole determinant for issuing a PCS order for a course of instruction is a scheduled course duration of 140 or more days. He states that there is nothing in the JTR that limits the duration of a course due to a holiday break. He cites JTR 032201-A-1-c, which he states instructs Authorizing Officials on how to calculate the scheduled duration of a course.

Discussion

In 1996, Congress transferred the authority once held by the Comptroller General of the United States (General Accounting Office, now the Government Accountability Office or (GAO)), to settle claims for military pay and allowances, including travel and transportation allowances under 31 U.S.C. § 3702(a)(1)(A), to the Director of the Office of Management and Budget (OMB). *See* Section 211 of Public Law No. 104-53, 109 Stat. 514, 535, November 19, 1995. The Director of OMB delegated his authority to the Secretary of Defense effective June 30, 1996. The authority of the Secretary of Defense in this regard was later codified in Section 202(n) of Public Law No. 104-316, 110 Stat. 3826, October 9, 1996. DOHA exercises the authority transferred and delegated to the Secretary of Defense. Under 31 U.S.C. § 3702(a)(1), DOHA's authority to decide cases such as this is derived from the same authority that provided the Comptroller General the authority to decide such claims. Specifically, under 31 U.S.C. § 3702(a)(1), DOHA settles claims involving uniformed service member's pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits. The implementing regulation for DOHA's authority is set forth in Department of Defense Instruction 1340.21 (May 12, 2004) and codified at 32 C.F.R. § 282.

The well-established general rule is that a claim may be allowed only for an expense authorized by statute or regulation. *See* DOHA Claims Case No. 2012-CL-070601.2 (October 16, 2012). The legal rights and liabilities in regard to travel allowances vest when the travel is performed under orders, and such orders if valid may not be canceled or modified retroactively to increase or decrease the rights which have become fixed under the applicable statutes and regulations. *See* DOHA Claims Case No. 0702270 (May 7, 2007); and Comptroller General decision B-259663, Jun. 12, 1995.

Under 10 U.S.C. § 12301(d), the Secretary of Defense may order reserve component members to active duty under PCS or TDY orders. Pursuant to the JTR, members are entitled to

various travel and transportation allowances when serving under these orders, depending on which type of order they receive. Under JTR ¶ 010206, travel and transportation allowances are payable only after valid orders are issued. Specifically, the order directs travel to, from, or between official points and serves as the basis for the trip and associated reimbursements. A travel order should be issued before the travel begins. That is because travel expenses incurred before a travel order is issued are not reimbursable unless otherwise stated in the JTR. Further, the JTR prohibits the retroactive modification of a travel order to increase or decrease an allowance after the travel is completed. However, a travel order may be retroactively corrected to show the original intent. *See* JTR ¶ 010206-A.

Preliminarily, we must stress that DOHA's authority in this case is limited to a review of whether or not the claim is payable under applicable statute and regulation relating to travel. The member appears to be seeking active duty pay and allowances for the two-week interval between Phase 1 and Phase 2 of the WOBC. DOHA has no authority to grant a claim in variance with the law. As set forth above, the Army confirmed that the member's travel orders for Phase 1, issued on October 2, 2020, are valid TDY orders. The Program Manager informed the member on September 28, 2020, that she had no authority to allow him to stay on active duty during the break between Phase 1 and Phase 2. DOHA has no authority to amend the member's orders. Based on the facts, and in accordance with the JTR and case precedent, there is no authority for the Army to retroactively change the member's orders. We uphold DFAS's determination.

Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision dated February 10, 2025. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

Catherine M. Engstrom
Catherine M. Engstrom
Administrative Judge
Chair, Claims Appeals Board

Michelle P. Tilford
Michelle P. Tilford
Administrative Judge
Member, Claims Appeals Board

David F. Hayes
David F. Hayes
Administrative Judge
Member, Claims Appeals Board