

KEYWORDS: Dislocation allowance (DLA), PCS

DIGEST: 1). The well-established rule is that a claim can only be paid if there is a basis for such payment in statute or regulation. 2) Unless shown to be arbitrary, capricious, or contrary to law, an agency's interpretation of a statutory provision and implementing regulation shall be sustained.

CASE NO: 2017-CL-073104.3

DATE: 08/05/2019

DATE: August 5, 2019

In Re:)	
[REDACTED])	Claims Case No. 2017-CL-073104.3
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

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

2) Unless shown to be arbitrary, capricious, or contrary to law, an agency's interpretation of a statutory provision and implementing regulation shall be sustained.

DECISION

A member of the U.S. Air Force Reserve requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-CL- CL-073104.2, dated June 5, 2019. In that decision, this Office denied the appeal for payment of dislocation allowance (DLA) pursuant to unaccompanied permanent change of station (PCS) active duty orders.

Background

The member was ordered to active duty from her Virginia home of record (HOR)/PLEAD (Place from Which Entered (or Called) to Active Duty) in February 2016 for duty at Ramstein Air Base (AB), Germany, and released from active duty in September 2016 to return to her HOR/PLEAD (hereafter HOR) in Virginia. Her orders authorized PCS entitlements. The orders did not provide for the movement of dependents and specified the controlling regulation was the Joint Travel Regulations (JTR). The member upon arrival in Germany requested DLA. The claim was denied by the Air Force Reserve Command and forwarded to the Defense Finance and Accounting Service (DFAS). DFAS sought confirmation as to whether the member had received a *Certificate of Release or Discharge from Active Duty*, DD Form 214. Upon confirming the member had a break in service, DFAS denied the member's DLA claim on the basis the JTR in effect did not authorize DLA from the HOR to a first permanent duty station (PDS).

The member appealed DFAS's denial of her claim. She argued that her orders were not for a PCS but for temporary duty (TDY). Therefore, she stated that her orders were not a valid way to change her duty stations or reserve status. The DOHA attorney examiner reviewed DFAS's denial of the claim, and the member's appeal and rebuttal to DFAS's administrative report. The attorney examiner upheld the denial of the claim on the basis that the member's status as a reservist called to PCS active duty from her HOR precluded her receipt of DLA under JTR ¶ 5444. Although the member had previously been placed on active duty in 2012 and 2013, she had been released from both of those tours with a DD Form 214.

In her request for reconsideration, the member continues to argue that her orders were not PCS orders. She states that they were military personnel augmentation (MPA) orders. She states DLA was not paid for her first duty assignment in 1998 to Charleston Air Force Base (AFB), South Carolina, which she attaches. She states that her unit of assignment is Joint Base Andrews and remained her unit in 2016 to present day. She states that the only way to change units is by a reassignment order and an Air Force Form 1288, *Application for Ready Reserve Assignment*. She states that JTR ¶ 5444 denies reservists DLA but only if the order stipulates restricted PCS entitlements. She states that her orders did not stipulate restrictions. She states that her separation from active duty to become a reservist occurred without a break in service in August 2006. She states that she was assigned to her first reserve unit in August 2006 until she was reassigned to Andrews. The member argues that the JTR unfairly discriminates against reservists because the only way reservists can PCS or change reserve status is through the use of Air Force Form 1288 which specifies these movement orders as PCS orders. She argues her reserve unit exercised administrative control of her and that these were TDY orders to Ramstein AB and her housing expenses exceeded her allowances.

Discussion

A fundamental rule in the adjudication of a travel claim against the Government is that reimbursement may only be paid for an expense authorized by statute or regulation. *See* DOHA Claims Case No. 2014-CL-091601.2 (December 30, 2014); and DOHA Claims Case No. 2012-

CL-061105.2 (September 27, 2012). 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. 99122105 (March 21, 2000).

The interpretation of a statutory provision and implementing regulation by those charged with their execution, and the implementation of them by means of a consistent administrative practice, is to be sustained unless shown to be arbitrary, capricious, or contrary to law. *See* DOHA Claims Case No. 05033105 (November 30, 2005); and DOHA Claims Case No. 05021409 (March 30, 2005). Thus, a claimant must prove that DFAS's interpretation or implementation of its authority was arbitrary, capricious or contrary to law. *See* Department of Defense Instruction 1340.21 ¶ E7.3.4; and DOHA Claims Case No. 08020701 (February 28, 2008).

Under 37 U.S.C. § 477, members of the uniformed services are generally authorized payment of DLA when a PCS requires the disestablishment of a household in one place and the reestablishment of the household in another place. However, 37 U.S.C. § 477(e) states that a member is not entitled to payment of DLA when the member is ordered from the member's home to the member's first duty station. The implementing regulations for payment of DLA to members are found in the JTR. The JTR in later versions specifically highlights in a note that reservists who receive unaccompanied orders to active duty from their HOR to a PDS are not eligible for DLA. In 2016, at the time of the member's travel, JTR ¶ 5444 specified when DLA was not authorized. Under this section of the JTR, DLA was not authorized in conjunction with a PCS, in pertinent part, under the following circumstances:

1. From home or from PLEAD to first PDS unless the dependents actually move from the member's residence to the PDS or designated place ICW the PCS (if the dependents do not relocate to the new PDS, or the member has no dependents, DLA is not authorized from home or PLEAD to the first PDS);
2. From last PDS to home or to the PLEAD;
3. From last PDS in one period of service to first PDS in another period of service when there was no ordered PCS between those stations;
7. For a Selected Reserve member authorized limited PCS allowances from home to duty station IAW par. 7400.

DLA was specifically listed as not authorized as one of the limited PCS allowances available to a member of the Selected Reserve. *See* JTR ¶ 7400(C)(3)(b) (2016).

In this case, the member's orders were new orders to active duty. More than 24 hours had transpired after the member last separated from active duty and the member's PCS orders were unaccompanied, so no dependent relocated to the new PDS. The member's appeal was denied based on the statute and regulation in effect in 2016, which did not authorize DLA from home or PLEAD to the first PDS.

As set forth in the appeal decision, the member's argument that her orders were not PCS orders seems to defeat her claim for DLA, since the express purpose of DLA is to provide

members with reimbursement for incidental expenses normally incurred in connection with relocation of their households upon a PCS. Although the member may have valid concerns regarding the differing effect of the implementing regulations on reservists versus active duty members, DOHA has no authority to pay a claim when it is specifically prohibited under statute and regulation.

Conclusion

The member's request for reconsideration is denied, and the appeal decision of June 5, 2019, is affirmed. 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
Chairman, Claims Appeals Board

SIGNED: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

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