

KEYWORDS: PCS, Travel Claim

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

CASE NO: 2018-WV-052201.2

DATE: 05/21/19

DATE: May 21, 2019

In Re:

[REDACTED]

Claimant

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Claims Case No. 2018-CL-052201.2

**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. 2018-CL-052201, issued on January 2, 2019. In that decision, DOHA denied the member's claim for additional travel expenses incident to his permanent change of station (PCS).

Background

On May 11, 2016, the member received an email from Headquarters, Air Force Personnel Center (AFPC), advising him that he had been selected to attend courses in the next fiscal year. He was further instructed by email that if he was identified to PCS, he should attend the courses as a temporary duty (TDY) enroute to his next duty station. On November 17, 2016, the member received PCS orders transferring him from Geilenkirchen, Germany, to Lackland Air Force Base, Texas, with temporary duty (TDY) enroute to attend a course at Gunter Air Force Base,

Alabama. The normal direct route of travel cited in the member's orders was Geilenkirchen to Dusseldorf, Germany, to Lackland Air Force Base, Texas. The member's orders authorized him to procure transoceanic transportation using an approved circuitous route through the Netherlands, to Dallas, Texas, to San Antonio, Texas. His orders limited his actual travel costs from the normal route from Germany to Texas to the constructed cost of \$1,149.96. The member purchased roundtrip airline tickets for himself from the Netherlands to Detroit, Michigan, to Dallas, Texas, and return to the Netherlands, in the amount of \$896.36.¹

On January 31, 2017, the member drove from Germany to the Netherlands, and flew to Detroit. On February 1, 2017, he flew to Dallas. On February 4, 2017, he drove to Alabama. On February 19, 2017, he drove to Lackland Air Force Base. The member submitted his travel voucher. On March 21, 2017, the travel office advised the member that he was not reimbursed his airfare because he did not follow the circuitous travel statement in his orders. He was advised to file a supplemental travel voucher for the airfare. On April 18, 2017, he submitted a supplemental travel voucher seeking reimbursement for cost of excess baggage, TDY lodging in Dallas, and his airfare in the amount of \$896.36. On April 27, 2017, the travel office voided the member's authorization for circuitous travel and reimbursed the member \$790.00 for his airfare, the constructed cost for the most direct route between the two authorized points in his orders for the leg of his journey, his old PDS in Germany to his TDY location in Gunter Air Force Base.

The member claimed the difference between the actual cost of his tickets and the reimbursement, \$106.36 (\$896.36 - \$790.00). The Air Force advised the member that he was not reimbursed for the actual cost of his airline tickets in the amount of \$896.36 because he did not follow the circuitous travel statement in his orders which listed his ordered point as San Antonio, not Montgomery, Alabama. Therefore, he was limited to reimbursement in the amount of \$790.00, the amount he would have been authorized had travel been via the direct route between Geilenkirchen, his old PDS, to Gunter, his TDY location.

The member made a claim for the additional amount of airfare with the Defense Finance and Accounting Service (DFAS). DFAS denied the member's claim. In the DOHA appeal decision, the attorney examiner upheld the denial of the member's claim by both the Air Force and DFAS. The attorney examiner found that under the Joint Travel Regulation (JTR), the member was limited to reimbursement for the constructive cost of his travel from Geilenkirchen to Gunter.

In the member's request for reconsideration, he states the government has acknowledged that an error was made outside his control when the circuitous travel statement in his orders did not list his TDY location but factored that location into the higher constructed cost of \$1,149.96. He argues that since the government committed the error, the government should correct it by reimbursing him the full amount of his airfare. He also questions the authority of DOHA to issue a decision in his case by using past case precedent since DOHA is not a court.

Discussion

¹The member also purchased roundtrip tickets for his dependents from Germany to Texas.

Under 31 U.S.C. § 3702(a), our office has the authority to settle claims involving uniformed service members' pay and allowances including travel claims. This authority was once held by the Comptroller General of the United States (GAO). Jurisdiction over such claims was transferred to the Secretary of Defense pursuant to Public Law No. 104-316, October 19, 1996. DOHA has been delegated authority to exercise the Secretary's responsibilities in this area of the law. Under such statutory authority, DOHA must render decisions based on applicable statutes, regulations and prior administrative decisions. Although DOHA is not a court of law, a decision by the DOHA Claims Appeals Board is the final administrative action of the Department of Defense in a military member's claim under 31 U.S.C. § 3702 and is considered precedent in all other cases. *See* Department of Defense Instruction 1340.21 (May 12, 2004) ¶ E7.15.2.

A member's pay and allowances are governed by the applicable statutes and regulations. Federal funds may be expended only in accordance with applicable laws and regulation. *See* Comptroller General decision B-256956, Oct. 27, 1994. The JTR is the implementing regulation for travel entitlements for uniformed service members, and as such, has the force and effect of law. A member's travel between duty stations is governed by chapter 5 of the JTR. Under JTR 050202, a member must use the Travel Management Center (TMC) for permanent duty travel, and reimbursement for personally procured transportation is limited to what the government would have paid had the member purchased the ticket through the TMC for authorized transportation over a usually traveled and direct route. When a member performs circuitous travel at personal expense, his reimbursement is limited to the amount he would have been authorized had travel been via the direct route between the old PDS and the new PDS. *See* JTR ¶ 050204.

The JTR sets out the maximum rates at which a member may be reimbursed when he purchases plane tickets for himself. Pursuant to the JTR, the government may not reimburse the member for more than the government would have spent to provide transportation directly or procure tickets for him. When a member chooses to make travel arrangements for himself, he assumes the risk that reimbursement for his airfare will be less than the full amount he spends. *See* 47 Comp. Gen. 440 (1968); B-256956, *supra*; and B-192949, June 6, 1979.

In this case, the member was reimbursed for his airline fare based on the JTR. Specifically, the Air Force determined that the member's constructive cost between authorized points in his orders, his old PDS to his TDY location, was \$790.00. *See* JTR ¶ 020205, Table 2-2. The choices the member made for his own convenience do not affect the liability of the government to reimburse him.

While it is unfortunate that the member's orders listed incorrect information regarding his constructed cost of travel, that does not provide a basis for payment, since the government is not liable for the erroneous acts of its officers, agents or employees. Erroneous information supplied by government officers, agents or employees cannot serve as a basis for payment of pay or allowances. *See* DOHA Claims Case No. 97110305 (January 12, 1998). As explained above, DOHA's authority is limited under 31 U.S.C. § 3702 to allow a claim only when such reimbursement is authorized by statute or regulation. As the Supreme Court has held, the erroneous advice of government officials to a claimant cannot estop the government from

denying benefits not otherwise permitted by law. *See Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), *reh'g denied*; DOHA Claims Case No. 07042414 (May 4, 2007); and DOHA Claims Case No. 99092806 (February 4, 2000). Hence, the fact that the member's travel orders quoted a higher constructed cost for airline tickets does not provide a legal basis to pay a higher amount. Therefore, any reliance the member may have had on the erroneous information contained in his orders does not create an entitlement to reimbursement. *See* DOHA Claims Case No. 9607022 (January 27, 1997).

Finally, DOHA's decision in this matter under 31 U.S.C. § 3702, in no way limits the member's right to pursue his case in federal court.

Conclusion

For the reasons stated above, the member's request for reconsideration is denied, and we affirm the appeal decision issued on January 2, 2019. In accordance with ¶ E7.15 of Department of Defense Instruction 1340.21, 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: Ray T. Blank, Jr.

Ray T. Blank, Jr.
Member, Claims Appeals Board

SIGNED: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board