

KEYWORDS: TDY, 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-061801.2

DATE: 05/10/19

DATE: May 10, 2019

In Re:)	
[REDACTED])	Claims Case No. 2018-CL-061801.2
Claimant)	

**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. Navy requests reconsideration of the January 25, 2019, appeal decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2018-CL-061801. In that decision, DOHA denied his request for additional reimbursement of expenses incurred during a period of permissive travel temporary duty (TDY) travel.

Background

The record shows the member traveled from overseas to the continental United States (CONUS) to take a professional licensing exam necessary to meet the state licensing requirements for his field. The member was issued a total of four sets of orders to effect this TDY. While arranging to return to CONUS for the exam, the member learned of a course unrelated to it, at a Naval Air Station (NAS) and submitted a request to attend. The first set of orders issued on January 13, 2016, initiated travel to CONUS on April 12, 2016, for eleven days

and authorized *per diem*. These orders reflected only the professional licensing exam, and not the course at the NAS. The second set of orders issued on March 1, 2016, initiated travel on April 12, 2016, to CONUS for eleven days, again only pertaining to the professional licensing exam. These orders did not authorize *per diem* and specified this was permissive TDY. The orders further stated that the member was authorized airfare for the purpose of taking the exam and no other costs were authorized. The third set of orders issued on March 30, 2016, initiated travel on April 12, 2016, to CONUS for eleven days and reflected the approval of the member's request to attend the NAS course. This third set of orders authorized \$178.00 in *per diem* but specified the travel was for permissive TDY for the exam and that no *per diem* or lodging was payable. On March 30, 2016, the member's command sent an email explaining that travel beyond the NAS was at the member's own expense. The fourth set of orders issued on March 31, 2016, amended the third set of orders and authorized TDY at the NAS for four days, April 18, 2016, through April 21, 2016.

On April 12, 2016, the member traveled from overseas to the NAS, and on April 13, 2016, traveled by rental car to take the professional licensing exam in another city. The member returned to the NAS on April 15, 2016, to attend the course. On April 22, 2016, he departed CONUS. The member submitted his travel voucher for reimbursement for his travel from overseas to the NAS, and return. The member's command advised the member that his reimbursement was limited to the cost of his airfare from his overseas location to the NAS, and return, and *per diem* for that portion of his travel only.

The member claimed full reimbursement for his travel from the NAS to the city where he took the professional licensing exam, and his return to the NAS for the course. In response to the member's claim, the Defense Finance and Accounting Service (DFAS) found conflict in the member's travel orders on the purpose of the travel, "training attendance" and "permissive TDY." DFAS recommended that since neither their office or DOHA has the authority to amend a travel order, that the member petition the Board for Correction of Naval Records (BCNR) in order to issue a determination on the matter of the nature of his tour. The member responded to DFAS that the BCNR would not take action on a petition until he exhausted his administrative remedies. DFAS maintained the position that they were unable to grant the claim due to the language in the member's travel orders. The member appealed DFAS's determination to DOHA.

The DOHA adjudicator sustained DFAS's denial of the claim. The adjudicator found that since the first and second set of orders were cancelled prior to the member's travel, the third set of orders with its supplement in the fourth set was controlling. The adjudicator determined that although the member's orders described his tour as routine TDY and for training, the orders also clearly stated that the member was authorized airfare to and from his overseas location to take the professional exam, and that no other costs were authorized. Item 16 of the member's orders further stated that the member was on permissive TDY for the exam, and no *per diem* or lodging was payable. Therefore, the adjudicator determined that based on the language contained in the orders, the member was limited to reimbursement for his airfare, the travel and transportation costs for the days he spent for the course at the NAS and the time he spent in travel from his overseas location to the NAS, and back. The adjudicator then explained that under paragraph 2205-A1a of the Joint Travel Regulation (JTR), a travel order may be

retroactively corrected to show the “original intent” of the activity that issued the order. The adjudicator advised that under that regulation, the member’s command may issue a correction of the third travel orders to clearly state that their intention was for the travel at both the NAS and the location of the member’s professional exam to be routine TDY, which could allow all transportation and travel allowances to the extent permissible by regulation for both locations. The adjudicator noted that the member’s command has refused to do so. He then, like DFAS, explained that the member may have an available remedy by petitioning the BCNR.

In his request for reconsideration, the member states that his command paid for his travel and transportation costs for his prior professional licensing exam which he believes sets precedent for paying his travel for this exam. The member maintains that DOHA did not meet the legal requirement contained in both the statute and regulation, 31 U.S.C. § 3702 and DoD Instruction 1340.20 (May 12, 2004), to settle his claim. In this regard, he believes that the appeal decision was ambiguous and contradictory in that the adjudicator stated that reimbursement is proper for certain items not yet paid but then denied the entire claim. He contends that the application of JTR ¶ 2200-B which states that the order is the basis for reimbursement to the traveler has been too narrowly interpreted by the adjudicator in light of the rest of the JTR.

Discussion

The fundamental rule in adjudicating a claim is that payment may be made only for an expense authorized by statute or regulation. *See* DOHA Claims Case No. 2011-CL-071501.2 (September 30, 2011); DOHA Claims Case No. 97110305 (January 12, 1998); and Comptroller General decision B-205113, Feb. 12, 1982.

For travel claims, we must base our decisions on the law and implementing regulations applicable to the situation at hand, which in this case, is the relevant portion of the JTR in effect at the time that the member traveled. Paragraph 1000-D of the JTR states that the JTR addresses allowances paid and reimbursed by the government, and does not address permissive travel. Travel orders permitting travel at the member’s option, as distinguished from directing travel, may be issued but do not authorize travel and transportation allowances or reimbursement of any expenses. *See* JTR 1000-D(1)(b). Our decisions have consistently held that when a member is on permissive TDY, he is traveling primarily for his own benefit, rather than the government’s, and therefore he may not receive *per diem* or travel expenses. *See* DOHA Claims Case No. 97110305, *supra*; B-227504, Oct. 27, 1988; and B-198764, Jan. 6, 1981. In addition, under the Department of Defense Financial Management Regulation (DoDFMR), permissive travel is defined as an authorized administrative action for a member not chargeable to leave and for which *per diem* and transportation allowances are not payable. *See* Definitions in DoDFMR, Volume 9, Travel Policy.

In this case, the travel orders issued to the member for the trip state on their face “permissive TDY” for the exam. Although the member argues that reimbursement should be allowed and not limited by the language of his orders, it is well established that legal rights and liabilities in regard to travel vest at and when the travel is performed under the traveler’s orders and that such orders may not be revoked or modified retroactively so as to increase or decrease

the rights and benefits which have been fixed under applicable statutes or regulations. *See* DOHA Claims Case No. 96100801 (July 22, 1997); and B-198764, *supra*.

The member argues that the DOHA adjudicator's appeal decision was ambiguous and contradictory. However, as we read the decision, the adjudicator properly denied the claim on the basis that the member's orders specifically stated the portion of his travel for the exam was permissive TDY. As already expressed by DFAS, the adjudicator then explained that the member may have a remedy either with his command under JTR ¶ 2205-A1a or with the BCNR. However, under applicable law, our office has no authority to allow the claim.

Conclusion

The claimant's request for relief is denied, and we affirm the January 25, 2019, appeal decision to deny member's request for additional reimbursement of expenses incurred during a period of TDY. 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: Ray T. Blank, Jr.

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