

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

KEYWORDS: Lodging Reimbursement

CLAIM NO: 2017-CL-100303.2

DATE: 04/30/2018

DATE: April 30, 2018

In Re:)	
[REDACTED])	Claims Case No. 2017-CL-100303.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

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

DECISION

A mobilized member of the Army National Guard requests reconsideration of the February 23, 2018, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-CL-100303. In that decision, this Office upheld the Defense Finance and Accounting Service’s (DFAS) denial of the member’s request for reimbursement of lodging expenses incurred from June 2007 through March 2009.

Background

The member was ordered to active duty from his home record in Oregon in July 2007, for duty at a base in the state of Washington, from August 2007 through August 2008. His orders directed him to contact the Installation Housing Office upon arrival. The orders further directed him to obtain a Statement of non-Availability (SNA) if lodging was not available at the

installation. The member contacted the Installation Housing Office but declined to use the government-provided housing. The member had purchased a home near the installation in June 2007, more than a month prior to the issuance of his temporary duty (TDY) orders to the base in Washington.

The member's orders were amended in January 2008, and sent to his Oregon address. The amended orders provided:

YOU ARE DIRECTED TO CONTACT INSTALLATION HOUSING. IF LODGING IS NOT AVAILABLE OR YOU ARE NOT ASSIGNED TO AN INSTALLATION, CALL LODGING SUCCESS AT 1-866-363-5171 TO OBTAIN HOUSING OR STATEMENT OF NONAVAILABILITY TO RESIDE ON THE ECONOMY.

In September 2008 orders were issued and addressed to the member's Washington address near the installation. These orders directed the member to use government quarters and mess, and if they were unavailable, the member was required to obtain a SNA.

The member did not obtain a SNA until November 2013 when a Commander responsible for lodging at the Base completed a DD Form 1351-5, *Government Quarters and/or Mess*, and noted the member had declined government quarters and had retained personal accommodations at his own expense. The member was paid a total of \$29,173.31 in travel expenses for the period of his TDY. Most of this payment was for *per diem* covering meals and incidental expenses, no amount for lodging was authorized for payment.

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-96070229 (December 6, 1996). Regulations that are promulgated pursuant to an express statutory authority have the force and effect of law, and DOHA cannot issue a determination at variance with such regulations. *See* DOHA Claims Case No. 2015-CL-082607.3 (March 31, 2017); and DOHA Claims Case No. 99122105 (March 21, 2000). A claim for travel and transportation shall only be allowed for an expense authorized by statute or regulation in effect at the time the travel is performed. *See* DOHA Claims Case No. 2010-CL-092106.2 (January 20, 2011); DOHA Claims Case No. 96070222 (January 27, 1997); and 65 Comp. Gen. 884 (1986). During the period at issue, the travel regulations for uniformed service members were issued in the Volume 1, Joint Federal Travel Regulations (1 JFTR).¹ It has been the consistent policy of the Department of Defense to require that government quarters will be utilized when available, and we have consistently held that except as it may otherwise specifically provide, Congress intends that public quarters which it provides for the uniformed services must be used to the

¹The 1 JFTR citations are from those regulations as they existed through Change 247, July 1, 2007, the start of the first month of the period at issue. They were not changed in substance through Change 267, March 1, 2009, the start of the final month at issue.

maximum extent practical. *See* DOHA Claims Case No. 2012-CL-110601.2 (March 28, 2013); and DOHA Claims Case No. 96070229, *supra*.

The member argues that there were no government quarters available at the base during his TDY tour there, but the Defense Finance and Accounting Service (DFAS) maintains otherwise. Pursuant to Department of Defense Instruction (DODI) 1340.21 (May 12, 2004) ¶ E5.7, the burden is on the member to prove by clear and convincing evidence on the written record that the United States is liable for the amount claimed. When the facts are in dispute between the member and the Component concerned, absent clear and convincing evidence to the contrary, this Board will accept the Component concerned's account. *See* DOHA Claims Case No. 2010-CL-092106.2, *supra*. In support of his case, the member provided incomplete documentation for the period in question; an unsigned September 2013 letter from the base's Assistant General Manager for Lodging stating no on-post housing was available for the member. However, the letter does not reference a period of time when quarters were unavailable. In addition, the DD Form 1351-5 signed by the Commander responsible for lodging at the base dated November 13, 2013, states that government quarters were available. As indicated in 1 JFTR U1045-A, a member ordered to TDY on an installation, is required to check availability of government quarters. Availability/non-availability must be documented as indicated in 1 JFTR U1045-C. When adequate government quarters are available on the installation to which a member is assigned TDY and the member uses other lodgings as a personal choice, lodging reimbursement is limited to the government quarters cost on the installation. *See* 1 JFTR U1045-A; and 44 Comp. Gen. 626 (1965). Therefore, the member's lodging costs cannot be reimbursed as *per diem* under 1 JFTR U1045-A. The member has not met the burden of proving that government quarters were not available for the purposes of 1 JFTR U1045-A and U1045-C.

The member contends he saved the government money by purchasing and occupying a house near his TDY location and that similarly-situated members were fully reimbursed their lodging costs. When a claim is not reimbursable under statute or regulation, it cannot be allowed on the basis of savings to the government. *See* DOHA Claims Case No. 2010-CL-120701.2 (January 26, 2011). Finally, 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 2015-CL-082607.3 (March 31, 2017).

Conclusion

The member's request for reconsideration is denied, and the appeal decision of February 23, 2018, 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: Ray T. Blank, Jr.

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