

DATE: March 31, 2017

In Re:)

[REDACTED])

) Claims Case No. 2015-CL-082607.3

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

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

DECISION

A U.S. Air Force (USAF) member requests reconsideration of the January 24, 2017, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2015-CL-082607.2. In that decision, this Office denied lodging expenses in the amount of \$6,095.28.

Background

The member is on active duty in the USAF, and was directed to perform temporary duty (TDY) at Kirtland Air Force Base (AFB), New Mexico, from September 2014 to April 2015. His orders identified his spouse as his dependent. On August 31, 2014, both he and his spouse signed a contract for a rental apartment which identified both of them as the renters. The member and his spouse occupied the rental apartment from September 6, 2014, to April 1, 2015. He submitted lodging expenses in the amount of \$12,999.78, which included utility fees. The member's travel voucher was processed by the Air Force Financial Services Center (AFFSC) and payment was made on May 19, 2015. He was reimbursed all the utility fees (electric power, gas, cable television, and Internet service expenses); however, he was reimbursed \$6,095.28 for lodging. His Summary of Payment (PCS Final Settlement) document stated, "The member spouse is on the rental agreement. The member will only receive [sic] half the lodging expenses."

The member requested AFFSC validate his full lodging allowance and during email correspondence he was referenced to the Joint Federal Travel Regulation (JFTR), Chap. 4, section H and I. He submitted his claim again on May 27, 2015, which was rejected by AFFSC on June 16, 2015, referencing he was previously paid on his original voucher. The member's claim was then mistakenly sent to this Office by the member's command by memorandum dated July 29, 2015. This Office returned the claim by letter dated September 1, 2015, for proper submission through the Defense Finance and Accounting Service (DFAS). On July 1, 2016, a clarification was made to the section of the Joint Travel Regulation (JTR) dealing with reimbursement in claims involving multiple lessees on leased lodging while on TDY. In a letter dated August 31, 2016, DFAS denied the member's request for reimbursement of full lodging. DFAS cited the same provision of the JFTR in effect at the time and noted that the clarification in effect on July 1, 2016, did not state it applied retroactively. This Office denied the member's claim for reimbursement of full lodging in an appeal decision dated January 24, 2017.

Discussion

The well-established rule is that a claim can be paid only if there is a basis for such payment in statute or regulation. *See* DOHA Claims Case No. 2010-CL-120701.2 (January 26, 2011). 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).

At 1 JFTR U4130-H1, the regulations state (emphasis in original):¹

H. Multiple Lessees Involving Leased/Rental Lodging

1. Leased/rented lodging (e.g., apartment, house, condo, etc.) that is shared with another person(s) whose name is on the lease/rental agreement/contract is split equally among the lessees. ***This includes nonofficial travelers whose name(s) is/are on the lease/rental agreement/contract.*** Official travelers are not authorized reimbursement for more than their equal share of the lodging payment.

At 1 JFTR U4130-I, the regulations state:

I. Dependents Accompanying Traveler on TDY. The fact that a traveler's dependent(s) may accompany the traveler on TDY, at personal expense, does not affect the traveler's prescribed per diem rate.

Effective October 1, 2014, 1 JFTR was replaced by the JTR. The provisions previously found in 1 JFTR U4130H1 and U4130I were moved unchanged to the JTR, par. 4130-H1 and 4130-I, respectively. Those paragraphs remained unchanged through April 1, 2015, the start of the last month of the member's TDY.

The member argued that there is no definition in the JFTR or now the JTR for "official traveler." That is correct; however, it is generally taken to mean the authorized traveler or the

¹ All 1 JFTR citations refer to it updated through September 1, 2014, the start of the member's TDY tour.

individual in whose name the orders are issued, thereby authorizing them to travel. In this case, that is the member's name. The member argues that his spouse is also on the orders as a dependent. While the member's spouse's name is on the orders, they are not addressed to her, nor do they authorize or direct her to travel. For these reasons, the DOHA adjudicator determined that the member was the official traveler. The member now argues that while his spouse is not an active duty military member, she is a dependent, and her status on his orders would allow plane tickets to be issued if their travel was to an overseas destination. That may be true, but he would still be the official traveler as the orders would still be addressed to him and the travel settlement would flow through his entitlements as an active duty military member.

Since the rental apartment at issue was occupied by two persons, the member and his spouse, but the member was the only official traveler, 1 JFTR U4130-H1 limited the member's reimbursement to his share of the lodging payment, 50%. The record shows that the member has already been reimbursed that share.

The member argues that his *per diem* rate is being affected which is contrary to 1 JFTR U4130-I. The adjudicator explained 1 JFTR U4130-I generally covers the situation in which the traveler was accompanied by a dependent and 1 JFTR covers the more specific situation wherein the dependent's name and signature were on the lease. When both a general and specific regulation cover the same situation, the specific regulation applies. *See* Comp. Gen. decision B-180109, Jan. 2, 1976. The adjudicator offered another explanation to reconcile the two paragraphs, but either way the member's reimbursement is limited to 50%.

The member argues that the clarification that amended this portion of the now JTR should apply to him. JTR, par. 4130-I, now reads (new text emphasized):

I. Dependents Accompanying Traveler on TDY. The fact that a traveler's dependent(s) may accompany the traveler on TDY, at personal expense, does not increase or decrease the traveler's per diem rate. **Authorized per diem (lodging plus M&IE) is calculated as if the traveler were not accompanied by dependents, except that IAW [in accordance with] pars. 4130-A7 and -A8, the lodging reimbursement is limited to the cost of lodgings sufficient to accommodate the official traveler(s).**

Under the amended JTR, par. 4130-I, a dependent is no longer considered a nonofficial traveler for the purpose of *per diem*. Thus, an official traveler accompanied by a nonofficial traveler spouse may be reimbursed in full for rent expenses, subject to any other limits in statutes and regulations. The member argues that since this is a clarification to the regulation, it should be applied retroactively. The change to the JTR clearly states that it was effective on July 1, 2016. Coordination with the Per Diem, Travel, and Transportation Allowance Committee (PDTATAC) confirms the effective date to be prospective in nature and not retroactive. An amendment to a regulation can only be applied prospectively, not retroactively. *See* 47 Comp. Gen. 127 (1967).

The member has contended that his spouse accompanied him based on the advice from personnel, implying, although erroneously, that she could do so at government expense. The

well-established rule is that the government is not bound or made liable by the erroneous advice or actions of its officers, employees, and agents. *See* DOHA Claims Case No. 09032301 (April 2, 2009).

The member also contends that her presence at the TDY station saved the government money. However, the member remained entitled to his Basic Allowance for Housing (BAH) for his old Permanent Duty Station (PDS) through the day before he reported to his new PDS, to include TDY en route. *See* JTR, Member in Transit Table 10E-12, Rule 1. A claim that cannot be allowed by statute or regulation cannot be allowed solely on the basis of savings to the government. *See* DOHA Claims Case No. 2010-CL-20701.2, *supra*.

Finally, the member contends that similarly situated members were fully reimbursed for lodgings. The record does not contain their situations, so we cannot comment on them except to point out the rule that 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 No. 96111801 (June 26, 1997).

Conclusion

The member's request for reconsideration is denied, and the appeal decision of January 24, 2017, 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: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board