

DATE: April 13, 2016

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In Re: )  
[REDACTED] ) Claims Case No. 2014-CL-111201.2  
Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The burden of proving the existence of a valid claim against the government is on the member asserting the claim. In the absence of specific statutory authority, interest and other expenses incurred by a claimant are not reimbursable as part of a travel claim.

**DECISION**

A member of the U. S. Air Force Reserve (USAFR) requests reconsideration of our Office's December 29, 2015, appeal decision in DOHA Claims Case No. 2014-CL-111201, which denied a member's claim for \$438,501.25 in additional interest, credit card late fees, late payment fees and other payments for travel arising from an injury she sustained in the line-of-duty (LOD).

**Background**

While the member was on active duty with the USAFR, her left ankle was injured in the LOD on August 9, 2003. The member subsequently underwent reconstructive surgery in 2003 and 2004, followed by physical therapy. She separated from active duty on December 28, 2004. On April 11, 2007, while the member was on another active duty tour, she reinjured her ankle in the LOD. She underwent more reconstructive surgery in 2007 and 2009, followed by physical therapy. The member traveled by road from her home to her appointments related to her ankle injury. In September 2007, the member began submitting her claims for reimbursement for travel into the Defense Travel System (DTS) until her human resources director told her that he would not approve them. After the member requested assistance from the director of her command, she submitted twelve vouchers into DTS for the period August 10, 2003, through September 23, 2010. As detailed in the appeal decision, during the period November 2009

through November 2010, the member was reimbursed for her mileage in the total amount of \$12,852.17, and was paid interest in the total amount of \$38.67. Therefore, she was paid a total of \$12,890.84.

The member subsequently claimed that she was not reimbursed for all the interest on her mileage claims. She asserted that due to inaction on forwarding her mileage claims by her human resources director, she was entitled to be reimbursed for more interest. The Defense Finance and Accounting Service (DFAS) advised the member that she had been paid all interest due her under the Travel and Transportation Reform Act of 1998 (TTRA). She appealed her claim for travel reimbursement of interest, late payment fees, late payment charge card fees and any other payments that our office deemed appropriate.

In the appeal decision, the adjudicator upheld DFAS's denial of the member's claim. In her reconsideration request, the member asserts that DFAS provided her with inaccurate information concerning the appeals process to DOHA. She contends that payment of her claim should be made because the government statutes and regulations dictate that she is entitled to be reimbursed for interest, late payment fees and charge card fees. The member further contends that DOHA erred in its decision in stating that the Air Force Board for Correction of Military Records (AFBCMR) extended her tour to December 28, 2004. She states that an additional AFBCMR directive extended her AD tour from December 28, 2004, to September 9, 2005. She states that the fact that she petitioned the AFBCMR to correct her military records concerning her LOD injuries is irrelevant. Thus, she maintains that DFAS and DOHA erred when they used the AFBCMR's actions to support denial of her claims and subsequent appeal. She states that DoD's policy is arbitrary and capricious and DFAS's refusal to make interest payments to her was unfair. She states that interest should be calculated from 2007 using the rate of the Prompt Payment Act (PPA).

### **Discussion**

Under DoD Instruction 1340.21 (May 12, 2004), the claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed. Thus, the burden of proving the existence of a valid claim against the government is on the member asserting the claim. Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. Therefore, the liability of the United States is limited to that provided by law (including implementing regulations). See DOHA Claims Case No. 2012-CL-101006.3 (March 20, 2014). With respect to the payment of interest, it is a well-established rule of law that the payment of interest on claims against the government of the United States may be made only under an express authority or contractual authorization. See DOHA Claims Case No. 2010-CL-042001.2 (August 30, 2012). There is no such authority or authorization which applies to this case.

As explained by the DOHA adjudicator in the appeal decision, although the member may have sought guidance regarding her travel claims and was given erroneous advice, the government is not bound or made liable by the erroneous advice of its officers, employees and agents. See DOHA Claims Case No. 09032301 (April 2, 2009). Further, even if the member

was given incorrect information concerning the appeals process to DOHA by DFAS, we find that she was given ample opportunity and time to submit her appeal and all relevant information supporting it to DOHA. The adjudicator then examined the written record and reviewed the relevant statutes and regulations before making his decision. As for the other errors she asserts DOHA made, such as the dates of the extension of her active duty tour and the decision by the AFBCMR, we find that even if DOHA did err, we view these errors as harmless. If DOHA stated this information incorrectly, it was not prejudicial to the rights of the member. In reviewing the record, we see no way the member's substantive rights were affected. Although the member states that the statutes and regulations dictate that she is entitled to be reimbursed for interest, late payment fees and charge card fees, she does not specifically cite any authority for their reimbursement. The adjudicator specifically examined the existing statutes and regulations, and disallowed the member's claim. In her reconsideration request, the member does not submit any new evidence that would change the outcome the adjudicator reached in the appeal decision.

### **Conclusion**

The member's request for reconsideration is denied, and we affirm the December 29, 2015, appeal decision in DOHA Claim No. 2014-CL-111201 disallowing the claim. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board