

KEYWORDS: Member 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.

CASENO: 2017-CL-050201.2

DATE: 09/25/2017

DATE: September 25, 2017

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In Re:)	
[REDACTED])	Claims Case No. 2017-CL-050201.2
)	
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. Air Force requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-CL-050201, dated July 28, 2017. In that decision, this Office denied the member’s claim for evacuation allowances and the restoration of 26 days of leave.

Background

In March 2012 the member was assigned to the U.S. Embassy in Burundi. His wife and son were living with him. On April 17, 2015, the member was issued permanent change of station (PCS) orders from Burundi to Illinois, to report no later than June 30, 2015. The member’s wife departed Burundi on April 19, 2015, leaving the member’s son in his care.

On May 14, 2015, the U.S. Department of State ordered evacuation of the dependents of all U.S. government personnel in Burundi due to political unrest. The Department of State designated Rwanda as the safe haven for evacuees. The member requested temporary duty travel (TDY) for both he and his son round trip from Burundi to Rwanda for 180 days. However, the two DD Form 1610, *Request for Authorization of TDY of DoD Personnel*, were not signed and dated by an authorizing/ordering issuing official (AO). The member and his son traveled to Rwanda on May 17, 2015. On May 18, 2015, the member and his son flew to the United States and reunited with his wife. The member reported to his permanent duty station (PDS) in Illinois on June 15, 2015.

On August 14, 2015, two travel orders were issued and signed by an AO for the member and his son. The travel order for the member directed him to perform approximately 179 days of TDY in Rwanda, and to proceed on May 17, 2015. The other travel order authorized dependent travel for the member's son to a safe haven for 30 days and evacuation allowances.

The member presented a claim for evacuation allowances and requested 26 days of leave be credited back to his leave account. Pursuant to paragraph 60625-B2b of the Joint Travel Regulations (JTR), the Defense Finance and Accounting Service (DFAS) denied the member's claim because his safe haven evacuation allowances terminated on the date he departed from his PDS in Burundi on May 17, 2015. Our Office upheld denial of the claim, citing the same reasoning. The DOHA adjudicator also disallowed the member's request for restoration of his leave. The adjudicator noted the well-established rule that the accounting for a member's leave is a matter primarily for the administrative determination of the member's service and such a determination will not be questioned in the absence of evidence of clear error. The adjudicator also found no evidence in the record that the member performed any official Air Force duties after he returned to the United States until he reported to his new PDS on June 15, 2015.

In the member's request for reconsideration, he states that the determination that evacuation allowances are not payable because he executed PCS orders when he traveled from Burundi to the United States prior to reporting to his PDS in Illinois constitutes a retroactive revocation of both his son's evacuation orders and his TDY orders which tasked the member as serving as his son's escort. He states that the retroactive revocation to deny or change an allowance is explicitly prohibited by the JTR, citing JTR ¶ 2205-A1b. Finally, the member contends that his TDY orders tasked him with escorting his son. Therefore, he was performing official duties and his leave should be restored.

Discussion

A member's entitlement to travel allowances is governed by Title 37 and the JTR. Section 475a of Title 37, United States Code, provides that under regulations approved by the Secretaries concerned, when dependents of members are ordered to evacuate by competent authority, they may be authorized such allowances as the Secretary concerned deems necessary to offset the expenses incident to the evacuation. That section also provides that for its purposes a dependent ordered to depart by competent authority includes, among others, a dependent who is present at or in the vicinity of the member's duty station when the departure is ordered and

who actually moves to an authorized safe haven designated by that authority, whether such safe haven is at or in the vicinity of the member's duty station or elsewhere. The implementing regulations for this statute are contained under Chapter 6 of the JTR. The applicable regulation concerning the termination of safe haven evacuation allowances is found under JTR ¶ 6025-B2. The regulation at the time of travel provided that safe haven evacuation allowances terminate on the date the member detaches/departs from the PDS from which the dependent's evacuation was authorized. *See* JTR ¶ 6025-B2b. In addition, evacuation allowances at a safe haven may not extend beyond the date a member's dependent departs from the safe haven for the PDS. *See* JTR ¶ 6025-B2c(2).

The member argues that the Department of State's ordered evacuation of dependents and both his son's and his TDY orders support the fact that he was entitled to receive evacuation allowances. However, a claim can only be allowed if it is for an expense that is authorized by statute or regulation. *See* DOHA Claims Case No. 2017-CL-042501.2 (July 27, 2017); and DOHA Claims Case No. 2016-CL-062701.2 (October 20, 2016). When the language of a statute or regulation is clear on its face, the plain meaning will be given effect and that plain meaning cannot be altered or extended by administrative action. On May 17, 2015, the member left Burundi and did not return. Once the member departed Burundi and detached from his PDS, his entitlement to evacuation allowances terminated. Any travel and transportation allowances that were payable to the member were PCS allowances because his travel from May 17, 2015, onward were for the purpose of his PCS. In addition, as pointed out in the appeal decision, since the member's son left the safe haven in Rwanda on May 18, 2015, to return to the United States, and continued on to his ultimate destination of the member's PDS, that action also terminated any evacuation allowances under the JTR.

The member contends that DFAS's determination that he performed PCS travel constituted a retroactive revocation of both his son's and his TDY orders which is prohibited under JTR ¶ 2205-A1b. In reading this section of the JTR, it supports the fact that the member's TDY orders could not be changed to increase his entitlement after travel. Although the member and his son did travel to Rwanda, the designated safe haven for the evacuation, they immediately left the next day for the United States. The member was in receipt of PCS orders to report no later than June 15, 2015, to his new PDS in Illinois. The member's son therefore did not return to the United States as an evacuee. *See* Comptroller General decisions B-164014, Aug. 2, 1998; and B-163729, Jul. 30, 1998.

Finally, the member argues that he was performing official duty by escorting his son. However, the member acknowledged that once he arrived with his son in the United States, he spent his time attending to his wife and son, arranging delivery of his family's household goods and privately-owned vehicle, and obtaining quarters at his new PDS.

Conclusion

For the reasons stated above, the member's request for reconsideration is denied, and we affirm the appeal decision dated July 28, 2017. 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: Charles C. Hale

Charles C. Hale
Member, Claims Appeals Board

Signed: Ray T. Blank, Jr.

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