

DATE: July 27, 2017

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In Re:

[REDACTED]

Claimant

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Claims Case No. 2017-CL-042501.2

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The Government is not bound by the erroneous acts of its agents, even when committed in the performance of their official duties. Neither misrepresentation by a transportation officer nor misinformation provided by military officials provides a legal basis for reimbursement of additional travel costs.

**DECISION**

A member of the U.S. Air Force requests reconsideration of the June 19, 2017, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2017-CL-042501. In that decision, this Office denied the member's claim for \$4,262.55 in travel costs.

**Background**

On August 26, 2013, the member was issued permanent change of station (PCS) orders from North Dakota to Korea, to report no later than November 10, 2013. This was for 12 months and was an unaccompanied, dependents restricted tour with a follow-on assignment to England. The member then sent his spouse and two children to the follow-on assignment in England. On August 18, 2014, the member was issued PCS orders from Korea to England, to report no later than December 19, 2014. This was a dependent accompanied tour. However, the member's dependents were already living at the member's follow-on assignment in England. The member's 2014 orders stated that he was authorized consecutive overseas tour (COT) leave travel and allowed him to defer his COT travel.

The member chose to defer COT travel until July 2015. On July 15, 2015, orders were issued authorizing the member and his three dependents to perform COT travel from England to Arizona, and return to England. The member utilized SatoTravel at his base in England to make his travel arrangements and used his government travel charge card (GTCC). When the member returned to England, it was determined that under the Joint Travel Regulations (JTR), the member was not authorized COT leave travel for his dependents because his dependents did not accompany the member on both of his tours. Therefore, the member was not reimbursed \$4,262.55 for his dependents' airfare.

The member's claim was forwarded to the Defense Finance and Accounting Service (DFAS). DFAS subsequently denied the claim for the COT leave travel for the member's dependents because under paragraph 7060-C of the JTR (JTR ¶ 7060-C), they did not accompany him on both of his tours. Our Office upheld denial of the claim, citing the same reasoning. Additionally, the adjudicator noted that both the SatoTravel office and the Military Personnel Flight (MPF) personnel assured the member he was authorized COT travel for his dependents. However, the adjudicator cited the long-standing principle that the government is not bound or made liable by the erroneous advice and actions of its officers, employees and agents.

In the member's request for reconsideration, he states that since the government is not liable, he should also not be held liable for the erroneous orders that improperly authorized COT leave for his dependents. The member acknowledges that his orders to Korea were unaccompanied, but states that his dependents were command sponsored and placed on both sets of orders. In this regard, he states that he completed the Dependent Travel to Designated Place (DTDP), which was subsequently signed by the Installation Commander. Further, he states that he only utilized SatoTravel and his GTCC because he was told it was a requirement. He states he would have chosen a more affordable airline and not have paid the government inflated rate.

## **Discussion**

A member's entitlement to travel allowances is governed by the applicable statute and regulations. The statutory authorization for travel and transportation allowances for travel performed in connection with COT leave is found in section 481b of title 37 of the United States Code. Under this statute, travel and transportation allowances for COT leave may be paid for the member and for the dependents of the member who are authorized to, and do, accompany him at his duty stations. At the time of travel, the applicable regulation for COT leave travel of a member and his eligible dependents was found in JTR ¶ 7060.<sup>1</sup> Under ¶ 7060-A, an eligible member, for personal travel, and on behalf of an eligible dependent, is authorized travel and transportation allowances for COT leave travel between authorized locations. The definition of an eligible dependent is found under ¶ 7060-C. Although the member's dependents may have been command sponsored for both of his tours, the member's dependents were not eligible

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<sup>1</sup>The current regulation is now found under JTR ¶ 5069, and the language remains the same as it did at the time of travel.

dependents under ¶ 7060-C4, because they did not accompany the member during both of his tours.

Although the member was given incorrect information by the SatoTravel office and by MPF personnel concerning his entitlement to his dependents' COT leave travel, and on his 2014 orders, as well as his dependents' subsequent travel orders, absent specific authority, the government may not pay those expenses to which the member was not entitled to receive under statute or regulation. *See* DOHA Claims Case No. 2010-CL-060201.2 (July 29, 2010); DOHA Claims Case No. 08122401 (January 8, 2009); DOHA Claims Case No. 09040901 (May 1, 2009); DOHA Claims Case No. 99092806 (February 4, 2000); and DOHA Claims Case No. 98012620 (March 20, 1998). While it is unfortunate that the member was misinformed as to his entitlement, that does not provide a basis for reimbursement, even when the misinformation appears in travel orders. *See* DOHA Claims Case No. 98012620, *supra*.

### Conclusion

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

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Catherine M. Engstrom  
Chairman, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board

Signed: Charles C. Hale

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Charles C. Hale  
Member, Claims Appeals Board