

KEYWORDS: service member travel claim

DIGEST: On reconsideration, this Board is not at liberty to set aside the interpretation of a provision in the Joint Federal Travel Regulations given to it by the officers or agency charged with its administration. That interpretation has controlling weight unless it is plainly erroneous or inconsistent with the language of the regulation.

CASENO: 2010-CL-020202.2

DATE: 4/20/2010

DATE: April 20, 2010

)	
In Re:)	
[REDACTED])	Claims Case No. 2010-CL-020202.2
)	
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

On reconsideration, this Board is not at liberty to set aside the interpretation of a provision in the Joint Federal Travel Regulations given to it by the officers or agency charged with its administration. That interpretation has controlling weight unless it is plainly erroneous or inconsistent with the language of the regulation.

DECISION

An Army service member requests reconsideration of the March 19, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-CL-020202. In that decision, DOHA affirmed the initial determination of the Defense Finance and Accounting Service (DFAS), disallowing the member’s claim for reimbursement of a customs tax the member paid equivalent to approximately \$450 that was assessed against the member’s household goods by a nation hosting the member for military professional training.

Background

The record indicates that in August 2009 the member conducted a permanent change of station (PCS) move from a post in the continental United States to a location in the host nation. Prior to delivery of his household goods, the member was informed by a representative from the company that arranged his move that the host nation had assessed a customs-related value added tax (VAT) in an amount equivalent to approximately \$450 on a couch set that was new. Apparently the set had not been previously used by the member as a household good at his prior permanent duty station. The member does not offer evidence on how this set came to be associated with his household goods. Documentation in the record suggests that the set was shipped separately from a third country to the member in the host nation.

On reconsideration, the member relies on the same basis for reimbursement of payment of the tax as he did on his appeal to DOHA, namely volume 1 of the Joint Travel Regulations (JFTR), Appendix G. *See, e.g.*, Change 272 (August 2009) Appendix G to the JFTR (Miscellaneous Reimbursable Expenses on Official Travel), page G-8, which states, among other things, “Travel and Transportation Related Expenses. Travel and transportation related expenses similar to any in this table may be authorized.” Based on this provision, the member argues that the tax he paid on the couch set is similar to reimbursable baggage transfer expenses authorized on page G-2: “Reimbursement is authorized for necessary travel and transportation-related miscellaneous expenses incurred on official business. These expenses include: 1. Excess Baggage. See Baggage, Excess Accompanied. 2. Baggage Transfer: NTE the customary local rates, and necessity for the transfer must be explained.” The member asserts that the necessity is evidenced by his PCS orders; the tax to allow the goods to pass over the border is equivalent to a baggage transfer fee; and the tax rate established the customary local rate.

Previously, when DFAS considered the member’s claim, it rejected his approach. In DFAS’s view, Appendix G, which involves separate miscellaneous travel entitlements, is not applicable to this situation. DFAS suggests that the claim for reimbursement of customs taxes charged on these items that the member recently purchased is related to the movement of his household goods pursuant to his PCS, and if reimbursable at all, must be reimbursed as an additional household goods shipping entitlement, assuming that he had not exhausted all of his PCS entitlements. DFAS recommended to the member that he contact his transportation office and determine whether he could possibly be reimbursed for the tax as part of the household goods shipment entitlement. However, in his reconsideration brief, the member states that he cannot explore this option without an amendment to his travel orders authorizing it, and he requests that DOHA now authorize it.

Discussion

Our Office must render decisions based on applicable statutes, regulations, and prior administrative decisions. The JFTR is the implementing regulation for travel entitlements under title 37, United States Code, Chapter 7, including allowances in connection with the movement of household goods in a PCS, and as such, it has the force and effect of law. *See* DOHA Claims

Case No. 04042602 (May 6, 2004). In interpreting the JFTR in this instance, we are performing a quasi-judicial function, and as such, we are not at liberty to set aside the interpretation given to it by the officers or agency charged with its administration (DFAS in this instance). That interpretation has controlling weight unless it is plainly erroneous or inconsistent with the language of the regulation. We give great deference to the agency's interpretation, *i.e.*, we need not find that the agency's construction is the only possible one or the one that we would have adopted in the first instance, but only that it is a reasonable interpretation. *See* the decision of the Comptroller General in B-222666, Jan. 11, 1988 (citing *Belco Petroleum Corp. v. FERC*, 589 F. 2d 680, 685 (D.C. Cir. 1978) and other decisions therein). Furthermore, to the extent that facts are in issue, the governing regulation is DoD Instruction 1340.21 (hereafter Instruction) (May 12, 2004), and under that Instruction the claimant must prove, by clear and convincing evidence, on the written record, that the United States is liable to him for the amount claimed. *See* Instruction ¶E5.7.

The member's orders suggest that some of his personal property may have been shipped through the third country, but there is no clear and convincing record evidence that the movement of an apparently newly-purchased couch set from the third country to the host nation is a necessary transportation-related expense incurred on official business. The record contains little information about how the set came to be associated with the member's household goods, or why the set, and the tax levied on it, is related to official business.

However, even if the Board could assume for purposes of this reconsideration that the tax paid on the couch set was an expense anticipated under Appendix G, DFAS reasonably construed Appendix G to preclude its application here. One could reasonably construe the JFTR's plain meaning to be that any entitlement related to the PCS movement of a member's household goods, particularly furnishings, is governed exclusively by Chapter 5, Part D of the JFTR in the absence of specific language to the contrary. The language on page G-8 of Appendix G concerning travel and transportation related expenses is very general and may be construed to apply only when such expenses are not treated specifically in other portions of the JFTR.

DOHA has no authority to modify, or request the Army to modify, the member's travel orders.

Conclusion

The member's claim is disallowed, and the appeal decision of March 19, 2010, is affirmed for the reasons explained herein. 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: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board