

KEYWORDS: military member travel claim

DIGEST: The Government is not be 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.

CASENO: 2010-CL-060201.2

DATE: 7/29/2010

DATE: July 29, 2010

In Re:

[REDACTED]

Claimant

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Claims Case No. 2010-CL-060201.2

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The Government is not be 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 United States Marine Corps requests reconsideration of the June 22, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2010-CL-060201. In that decision, this Office denied the member's claim for \$2,142.07 in travel costs.

Background

The member, stationed in Japan, was aware that he and his family would be entitled to government-procured transportation to and from his home of record in the United States as a result of his Consecutive Overseas Tour (COT). The member was subsequently authorized COT leave travel to Toronto, Canada, instead of his home of record in New Jersey. However, he was advised that the maximum allowable cost for COT leave travel to and from New Jersey was \$6,576.00, and that he would be liable for any excess cost of travel. The member purchased round-trip tickets for himself and his two children to Toronto for the total cost of \$3,792.75. He later realized that he and his children could also fly to Jamaica and back and stay within the limit of \$6,576.00 maximum for travel reimbursement. Thus, the member purchased additional round-trip tickets from Toronto to Jamaica for himself and his children at the cost of \$2,218.53. The total for the airfare was \$6,011.28 (\$3,792.75 + \$2,218.53), less than the limit of \$6,576.00. The member was paid \$3,792.75 for his COT leave for his travel to and from Toronto but not for his travel to and from Jamaica. The member filed a claim for his travel to and from Jamaica, asserting that his travel orders had been modified after the travel to show his intent to travel via Toronto to Jamaica, and that the total cost of air travel was less than the maximum amount allowable. The Disbursing Officer for Marine Expeditionary Force, Okinawa, recommended denial be sustained on the grounds that the applicable regulations authorize COT leave travel to a single location, not multiple; that the single location, Toronto, was the one stated in the member's orders; and that the destination could not be changed retroactively to include Jamaica.

The member's claim was forwarded to the Defense Finance and Accounting Service (DFAS). DFAS subsequently denied the claim. DFAS found that the applicable regulations allowed COT leave travel to the member's home of record or an alternate authorized place, and thus the additional travel to and from Jamaica was not in compliance with the regulations and could not be reimbursed. DFAS also denied the validity of the post-travel change to the member's travel orders as a retroactive change to create an additional entitlement, not to correct an administrative error. Our Office upheld denial of the claim, citing the same reasoning.

In the member's request for reconsideration, he states that he was provided misinformation from duty experts that could have been corrected before he traveled. He states that he submitted his itinerary to the Installation Personnel Administration Center (IPAC) prior to purchasing his tickets. He asserts this submission to IPAC with his advance travel request is proof of his intent to travel to Jamaica.¹ He states that he was told by IPAC representatives that his alternate destination request did not have to be modified.

Discussion

A member's entitlement to travel allowances is governed by the applicable statute and regulations. As noted by the DOHA adjudicator in the appeal decision, the statutory authorization for travel and transportation allowances for travel performed in connection with

¹ Although the member states that he communicated his intent to travel to Jamaica by submitting his itinerary, we note that the official documentation, specifically the *Application for Transportation for Dependents*, DD Form 884, which the member signed on May 6, 2009, does not mention Jamaica.

COT leave is found in section 411b of title 37 of the United States Code. Under this statute, a member may be paid travel and transportation allowances in connection with authorized leave from his last duty station to a place approved by the Secretary concerned and from that place to his designated post of duty. The applicable regulation for travel of members in connection with leave taken with COT is found in volume 1 of the Joint Federal Travel Regulations (JFTR), paragraph U7200. Under subparagraph A3b of ¶ U7200, an authorized destination is the member's home of record or an alternate authorized place to which travel is no more expensive than to the home of record.

The entitlement to travel allowances is established when travel expenses are incurred under competent orders. Reimbursement for travel is not authorized when travel is performed in anticipation of written or verbal orders. A member's entitlements cannot be increased by erroneous information provided by government employees. This is the basis of the long-standing principle that the government is not bound by negligent or erroneous information provided by its officers, agents or employees. *See* DOHA Claims Case No. 99092919 (April 19, 2000), and DOHA Claims Case No. 96070222 (January 27, 1997). Neither misrepresentation by a transportation officer nor misinformation provided by military officials provides a basis for reimbursement. *See* DOHA Claims Case No. 99092807 (March 8, 2000), and DOHA Claims Case No. 96070222, *supra*.

In this case, the May 6, 2009, alternate destination approval of the member's COT leave authorized travel at Government expense for the member and his children to and from Toronto. Although the member now argues that the itinerary he subsequently submitted to IPAC on May 8, 2009, demonstrated his intent to travel to Jamaica, this does not form a basis for reimbursement under the applicable statute and regulations. The member's choice to go to Jamaica during his COT leave does not affect the liability of the Government to reimburse him. *See* Comptroller General Decision B-256956, Oct. 27, 1994. The member is limited to reimbursement in the amount of \$3,792.75, the airfare from Japan to Toronto and back, which has already been paid.

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: 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