

KEYWORDS: service member travel claim

DIGEST: Claims against the Government may be allowed only for expenses authorized by statute or regulation.

CASENO: 2010-CL-120701.2

DATE: 1/26/2011

DATE: January 26, 2011

In Re:)
 [REDACTED]) Claims Case No. 2010-CL-120701.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Claims against the Government may be allowed only for expenses authorized by statute or regulation.

DECISION

A U.S. Air Force member requests reconsideration of the December 14, 2010, appeal decision of the Defense Office of Hearings and Appeal (DOHA), in DOHA Claim No. 2010-CL-120701. In that decision, this Office denied the member's claim for \$1,312.76 in travel expenses.

Background

The record shows that a member of the United States Air Force requested to take leave from August 31, 2010, to September 6, 2010, for a vacation in Paris, France. Permission was granted, and the member purchased tickets the same day from British Airways for \$1,479.76 (\$1,060.00 plus \$419.76 in taxes, fees, etc.). The booking information printout included this

message: "Pax non-ref/changes restricted." Due to mission support requirements, the member was directed by his supervisor to postpone his leave. Approval of the change to the member's leave plans was made on August 24, 2010. On August 25, 2010, the member contacted British Airways and rescheduled the trip from September 2, 2010, through September 8, 2010. British Airways charged the member an additional \$1,112.76, plus a \$200.00 cancellation fee, for a total of \$1,312.76, which was almost double the cost of the original travel.

The member claimed reimbursement for the \$1,312.76 from the Air Force, claiming that the charge was incurred due to his mission requirements. The Defense Finance and Accounting Service (DFAS) by letter dated November 8, 2010, denied the claim on the basis that there was no legal authority to pay it. The member appealed the decision by letter dated November 30, 2010, arguing that had he been recalled from his leave in Paris for the mission, the Government would have been obliged to pay \$1,687.90 for his travel home. Rescheduling his travel beforehand at an additional cost of \$1,312.76 thus saved the Government the difference, \$375.14. DFAS forwarded the member's claim to our Office on December 3, 2010, with a recommendation that the claim be denied. DFAS noted that the member received word of the mission requirement while still at his permanent duty station (PDS), prior to his scheduled departure. Our adjudicator concurred with DFAS's recommendation, again on the basis that there was no legal authority to pay the claim. The member requested reconsideration of the adjudicator's decision. The member contends that there are Comptroller General decisions that address his situation, and they were not applied.

Discussion

Joint Federal Travel Regulation (JFTR) Volume 1, paragraph U7220, change 285, September 1, 2010, was the regulation that was in effect at the time of the member's travel. Paragraph U7220, Recall From Leave, states:

A. Member's Responsibility. Except as prescribed in par. U7220-B a member en route to or at a leave location, who is ordered to return to a duty station (permanent or TDY) for duty, must bear the cost of returning. . .

B. Recall for Operational Reasons. . .

2. Eligible Member. An eligible member is one who departs from a PDS or TDY station on authorized leave and is recalled to the same duty station because of:

a. Actual contingency or emergency war operations, or

b. An urgent, unforeseen circumstance (and the authorized leave is for 5 or more days):

(1) Within 24 hours of departure, or

(2) More than 24 hours after departure, if the commanding officer authorizes/ approves after determining that:

(a) A substantial portion of the scheduled leave period has been eliminated by the recall, or

(b) The leave purpose has been defeated (60 Comp.Gen. 648 (1981)).

The member argues that the decisions, 60 Comp. Gen. 648, *supra* and 39 Comp. Gen. 611 (1960), address his specific situation and our Office should review these decisions and reconsider his claim. The member contends that these decisions “address [his] situation for recall from *intended* leave.”(emphasis in original). In 60 Comp. Gen 648, *supra*, a military member on an authorized leave of absence for over 5 days was recalled to duty due to urgent unforeseen circumstances. The issue was whether the member should receive return travel and transportation expenses if the recall is more than 24 hours after his departure. As explained in the decision, Volume 1 of the Joint Travel Regulations (JTR) precluded reimbursement after 24 hours due to the rationale in 39 Comp. Gen. 611, *supra*. In that case, the Air Force wished to apply a proposed regulation to its civilian employees, and the regulation set forth the requirement that a civilian employee on an authorized leave of 5 days or more would receive return travel and transportation expenses if recalled “very shortly after arrival at the place of beginning leave.” Because of the possibility of various interpretations of that time limit, the Comptroller General suggested language which limited the entitlement to employees recalled within 24 hours after departure from the duty station. In 60 Comp. Gen. 648, *supra*, recognizing that the benefit previously provided only to civilian employees was now also available to military members (46 Comp. Gen. 210 (1966)), the question was asked whether the words “within 24 hours after departure therefrom” could be deleted. The Comptroller General determined that a more appropriate manner with which to deal with those occasions that might warrant a departure from the general rule was to keep the 24 hour requirement, but allow for some exceptions which are now in Volume 1 of the JFTR. Therefore, if a traveler is recalled 24 hours after departure, his commanding officer may approve reimbursement if a substantial portion of the scheduled leave period has been eliminated by the recall, or the leave purpose has been defeated.

This Office believes that the member may be relying upon the sentence in 60 Comp. Gen. 648, *supra*, in which the Comptroller General states “[i]n more recent decisions, we have had occasion to discuss more specifically the matter of recalls from *intended* leave.” (emphasis added). The case then discussed a number of instances where employees were recalled from leave at various times during the leave period to evaluate whether the 24 hour rule should apply. The important factor in all these cases, and particularly the one at hand, is that the employee or member was recalled from leave for a mission requirement. This member was not recalled. He had to change his leave time, thereby causing a large change fee charge. The member, however, had not departed on leave prior to the change in his leave time and so was not recalled from leave. The member argues that had he gone on leave and had to be recalled, the amount he is claiming is less than what it would have cost to return him to duty, thereby saving the Government money. There is no authority to pay for the items claimed by the member, and a claim cannot be allowed solely on the basis of savings to the Government if the claim cannot otherwise be allowed. *See* DOHA Claims Case No. 97041006 (August 26, 1997).

A fundamental rule in the adjudication of a travel claim against the Government is that reimbursement may be paid only for an expense authorized by statute or regulation. *See* Comptroller General Decision B-205113, February 12, 1982. The general rule regarding the responsibility of a member who is ordered to return to duty from leave is that the member must bear the cost of returning, 1 JFTR ¶ U7220. There is a narrow exception to this rule if the member is recalled for operational reasons within a certain timeframe; and if not in that timeframe, there is another narrow exception. But this member was not recalled from leave, so these exceptions do not apply. He had not departed for leave when he was informed that his leave would have to be changed.

Conclusion

The member's request for reconsideration is denied. In accordance with the Department of Defense Instruction 1340.21, ¶ E7.15.2, (May 12, 2004), this is the final action by the Department of Defense in this matter.

///Original Signed///

Michael D. Hipple
Chairman, Claims Appeals Board

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