KEYWORDS: military member travel claim

DIGEST: The Army found that the member had submitted fraudulent lodging claims for the period August 2005 through May 2007. The record evidence supports this finding. Therefore, our Office will not disturb the resulting recoupment action taken against the member by the Defense Finance and Accounting Service, nor will we allow the member's reclaim in the amount of $83,795.32 in lodging costs for this period. However, the member ceased filing lodging claims after May 2007. Accordingly, if not already reimbursed for this period, the member may recover authorized expenses incurred for the period June 2007 through October 2007.

CASENO: 2011-CL-071801.2

DATE: 5/21/2012

DATE: May 21, 2012

In Re:	)	
[REDACTED]	)	Claims Case No. 2011-CL-071801.2
Claimant	)	

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

The Army found that the member had submitted fraudulent lodging claims for the period August 2005 through May 2007. The record evidence supports this finding. Therefore, our Office will not disturb the resulting recoupment action taken against the member by the Defense Finance and Accounting Service, nor will we allow the member's reclaim in the amount of $83,795.32 in lodging costs for this period. However, the member ceased filing lodging claims after May 2007. Accordingly, if not already reimbursed for this period, the member may recover authorized expenses incurred for the period June 2007 through October 2007.

DECISION

A member of the U. S. Army Reserve requests reconsideration of our Office's August 25, 2011, appeal decision in DOHA Claims Case No. 2011-CL-071801.

Background

The member was called to active duty (AD) at the Pentagon. From 2002 to July 2005, the member submitted monthly travel vouchers for the reimbursement of her rental and other subsistence costs to the Defense Finance and Accounting Service (DFAS). Because the member had difficulty receiving timely and complete reimbursement from DFAS, she sought guidance from a senior officer. He advised the member to combine all of her lodging expenses into one sum and claim reimbursement as rent. The senior officer gave her a fictitious invoice to use for this purpose. The member began using this method of claiming reimbursement for expenses incurred in August 2005.[1] She purchased a home on October 19, 2005, and continued using this method for reimbursement through May 2007. The member claimed $3,700.00 per month for 22 months, for a total of $81,400.00. The member alleges that she discovered that the combined expenses method was not permissible in May 2007, and ceased submitting monthly claims in June 2007. The member's AD tour ended in October 2007.

In late 2007, the Army Criminal Investigation Command (CID) launched an investigation into whether the member had engaged in fraud against the United States with respect to the submission of travel vouchers in connection with her tour at the Pentagon. The CID concluded its investigation in July 2008, finding that the member committed the offenses of fraud, larceny and false official statement when she submitted travel vouchers containing a fictitious lease agreement and receipts for rent at a property she purchased in October 2005. The investigation found that the total loss to the government was $81,400.00, for the member's submissions from August 2005 through May 2007. The CID then transmitted its finding to the Office of the Staff Judge Advocate (JAG). The record indicates that the JAG prosecutor assigned to the matter reached a mutually agreeable disposition of the matter with the member.[2] The record reflects

---

[1]The record reflects that the member began submitting her vouchers using this method in approximately January 2006 for reimbursement of expenses beginning in August 2005.

[2]As part of the CID's investigation, the Department of Defense Office of Inspector General issued a subpoena to the member's bank seeking financial records. The CID concomitantly transmitted to the member a notice of this subpoena tailored to the specific dictates of the Right to Financial Privacy Act (RFPA). The notice informed the member that she could file a motion with the United States District Court pursuant to the RFPA if she desired that her records not be made available by her financial institution. The member filed a RFPA motion with the Court on May 9, 2008. On November 6, 2008, in response to her motion, the government explained that the issue was moot, stating: "In July 2008, Army CID completed its investigation (without ultimate execution of the subpoena at issue here), and transmitted its findings to the Office of the Staff Judge Advocate ("JAG") at Fort Sam Houston, which is

that the JAG recommended that the member be issued a letter of reprimand. A local letter of reprimand was placed in the member's file on September 4, 2008. However, due to an administrative error, the DA Form 4833, *Commander's Report of Disciplinary or Administrative Action*, which officially concluded the CID's investigation of the member, although referred to the Commander in August 2008, was not signed until March 1, 2010. Subsequently, the CID forwarded their file to DFAS to initiate recoupment against the member in the amount of $81,400.00. DFAS then audited the member's claims from August 2005 through May 2007. Based on the audit and the CID report, DFAS initiated collection from the member in the amount of $81,400.00.

On January 4, 2011, DFAS reviewed the member's submission of a revised voucher for the period January 2005 through October 2007.[3] In her voucher, the member claimed reimbursement for expenses of apartment rental, home mortgage, uniform maintenance, cable television, cleaning service, furniture rental, telephone service, gas, electric service, local and state taxes, and intercity travel by private automobile. She also provided a written statement explaining that the motive for her action was to resolve the difficulty in obtaining reimbursement through the correct method. She emphasized that she had mistakenly relied on the advice of a senior officer.

DFAS subsequently denied the member's claim on the grounds that a fraudulent claim invalidates a later corrected claim. The member subsequently appealed her claim to our Office. In her appeal, she claimed $83,795.32 in lodging costs for August 2005 through May 2007. She disputed the characterization of the vouchers as fraudulent and described the use of "rent" rather than "mortgage" as a mistake rather than fraud. She noted the absence of punishment other than a local letter of reprimand and also pointed out that she stopped submitting the combined expense vouchers when she learned that the method was improper. In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the member's claim. The adjudicator found that from August 2005 through September 2005, the member sought payment for the single item of rent using a fictitious invoice. From October 2005, through May 2007, the adjudicator found that the amounts the member claimed as rent using the fictitious invoice were actually claims for mortgage payments, utility fees and other items. The adjudicator found that the monthly claims originally made by the member for the period August 2005 through May 2007 were fraudulent. Because of the fraud, the adjudicator determined that the member's subsequent claim for the

---

located in San Antonio, Texas. At some point thereafter, the JAG prosecutor assigned to the matter reached a mutually agreeable disposition of the matter with [the member], which, in the interest of [the member's] privacy, the United States will not disclose here. Accordingly, the United States considers the entire matter, from investigation to prosecution - including the subpoena that is the exclusive focus of the instant motion - to be closed."

[3]The member reports that she submitted the revised vouchers to DFAS on December 4, 2009, and received a return receipt on December 7, 2009, but received no response on the claim itself.

same period, while based on actual expenses, should be disallowed.

In the member's reconsideration request, through her attorney, she requests that either DFAS cease recoupment in the amount of $81,400.00 or DOHA approve her revised claim in the amount of $83,795.32. She alleges that DFAS failed to follow the procedures set forth under Department of Defense Instruction 1340.21; and as such, DOHA's appeal decision is both procedurally and substantively defective. She further states that DOHA's October 13, 2011, denial of her request for a copy of the CID report and the documentary evidence gathered pursuant to the CID's investigation has prevented her from advancing a comprehensive request for reconsideration. The member seeks to distinguish her case from the cases cited by the adjudicator in the appeal decision. She states that the main distinction is that the claimants in the cases cited in the appeal decision all sought reimbursement for expenses that they had not incurred at the time the original claim was submitted. She argues that the underlying fraud arises from seeking payment when no actual expenses had been incurred. She cites Comptroller General decision B-189072, Aug. 17, 1978, in support of her position, quoting the following language, "When an employee submits a final and valid settlement voucher from which there has been eliminated the false claim, no recoupment action appears necessary under the rules set forth above." She states that she submitted revised vouchers on December 4, 2009, which correctly listed her lodging expenses from August 2005 through May 2007.

Discussion

The burden of establishing fraud which will support either the denial of a claim or recoupment action in the case of a paid voucher rests upon the party alleging it, and must be proven by evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing. Circumstantial evidence is competent for this purpose, provided it affords a clear inference of fraud and amounts to more than suspicion or conjecture. However, if the circumstances are as consistent with honesty and good faith as with dishonesty, the inference of honesty must be drawn. *See* Comptroller General decision B-213624, May 10, 1985, *citing* B-187975, July 28, 1977. The question of whether fraud exists depends on the facts of each case. Although it is the member's responsibility to accurately complete a travel voucher to ensure proper payment, it may not be assumed automatically that a member who has not observed all the requirements of the travel regulations in completing a voucher is filing a fraudulent claim. Innocent mistakes are made and shortcuts taken in the completion of vouchers. Not every inaccuracy on a voucher should be equated with an intent to defraud the government. Generally, where discrepancies are minor, small in total dollar amounts, or where they are infrequently made, a finding of fraud would not normally be warranted absent the most convincing evidence to the contrary. By the same token, where discrepancies are glaring, involve greater sums of money, or are frequently made, a finding of fraud could be more readily made absent a satisfactory explanation from the claimant.

In this case, the CID report of investigation concluded that the member committed the offenses of fraud, larceny and false official statement when she submitted vouchers containing a

fictitious lease agreement and receipts for rent of a property she owned. The member purchased the property in October 2005, and was not authorized the reimbursements she claimed. The evidence in the file clearly supports a determination that the member filed fraudulent travel vouchers from August 2005 until May 2007. A review of the invoices she submitted reflects that she used a fictitious company name and address for her nonexistent lessor, inputted each month a fictitious invoice number and customer identification number, and created a fictitious payment by her credit card for fictitious rent. The method the member used in claiming reimbursement involved glaring discrepancies and large sums of money and transpired over a 22- month period. The member herself admitted in her original written statement to DFAS that the CID investigation confirmed what she had learned in May 2007, that "the way in which the claims were submitted was misleading (rent versus mortgage) and all in one lump sum, in essence was fraud." In addition, as reflected on the DA Form 4833, although the action taken was administrative (a local letter of reprimand on September 4, 2008), this action was taken against the member for the offenses of larceny of government funds, fraud and making a false statement. In addition, the record indicates that this action was taken as a result of a mutually agreeable disposition of the matter between the JAG prosecutor assigned to the case and the member. Therefore, we will not disturb the recoupment action for the $81,400.00 fraudulently claimed by the member and paid to the member during the period August 2005 through May 2007. However, the member suggested in her original written statement to DFAS that she was never fully reimbursed for the period January 2005 through July 2005, and she was never reimbursed for the period June 2007 through October 2007. She estimated that she was owed approximately $22,000.00 during the period June 2007 through October 2007, for mortgage interest, property taxes and utility expenses actually incurred. Since the member did not file fraudulent claims for either of these periods, she should be reimbursed. Therefore, it is up to DFAS and the member to determine the amounts for reimbursement.[4]

Because fraud exists with regard to the member's claim for lodging reimbursement for the period August 2005 through May 2007, we see no error in the adjudicator's application of the decisions cited in the appeal decision. The member cannot later reclaim these expenses even when these expenses are actually incurred, since the fraudulent submissions are viewed as vitiating any payment arising out of the transaction.

As for the member's allegation that DFAS denied her procedural and substantive due process, we see no evidence of this in the record. We do note that DFAS processed her claim as a reclaim under the applicable procedures found under Chapter 25 of Volume 5 of DoD 7000.14-R, the Department of Defense Financial Management Regulation (DoDFMR), Disbursing Policy and Procedures - Claims Against the Government (Includes Questionable and Fraudulent Claims). Paragraph 250405 states that the certifying officer forwards reclaims for items disallowed or recouped due to fraud to the appropriate responsible office through the certifying

[4]We have been informally advised by DFAS that the member was reimbursed for expenses from January 1, 2005, through July 31, 2005. However, there is no record that the member filed for reimbursement for the period June 2007 through October 2007.

officer's chain of command and the DoD Office of General Counsel (Fiscal). Subsequently, we have been informally advised by DFAS that this paragraph does not apply to the member's situation because the claim was paid by the certifying officer, and later determined to be fraudulent. Since there was no payment to certify, paragraph 250405 is not applicable. Although DFAS may have processed the member's claim under this paragraph, we see no failure of due process in DFAS's submission of the claim to DOHA. DFAS's administrative report mirrored the written determination it gave to the member. The member had the opportunity to fully rebut DFAS's position in her appeal to us, and again in her reconsideration request.

As for the Army CID report and supporting documentation, the member was advised by our Office to contact the Army CID directly, since they are the only agency which can release the information.[5] We note that the member was given a point of contact at DFAS for requesting the information from the CID. In addition, the UCMJ has no application on our decision in this matter.

Conclusion

The member's request for relief for the period August 2005 through May 2007 is denied, and the August 25, 2011, and this is the final administrative action of the Department of Defense in this matter. *See* ¶ E7.15 of the Instruction.

Signed: Jean E. Smallin

_____

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

_____

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

_____

Natalie Lewis Bley
Member, Claims Appeals Board

[5]We note that in the member's original written statement, she references content of the CID report, stating, "I am sure it would be easy to make a decision regarding my appeal with only the CID report at ones disposal, not knowing the circumstances."