

KEYWORDS: Waiver of Indebtedness

DIGEST: The claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed. All relevant evidence to prove the claim should be presented when a claim is first submitted. In the absence of compelling circumstances, evidence that is presented at later stages of the administrative process will not be considered.

CASENO: 2012-CL-100301.2

DATE: 11/27/2012

DATE: November 27, 2012

In Re:)	
[REDACTED])	Claims Case No. 2012-CL-100301.2
Claimant)	

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

The claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed. All relevant evidence to prove the claim should be presented when a claim is first submitted. In the absence of compelling circumstances, evidence that is presented at later stages of the administrative process will not be considered.

DECISION

A member of the U.S. Navy requests reconsideration of the November 5, 2012, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2012-CL-100301. In that decision, this Office denied the member's claim for \$3,107.45 in meals and incidental expenses (M&IE).

Background

Under orders dated November 1, 2011, the member was ordered to perform approximately 266 days of temporary duty (TDY). The member's TDY tour was to start with travel from his permanent duty station (PDS) to another duty station on January 2, 2012, and was estimated to end on September 24, 2012. Most of the TDY tour would be performed overseas, but the period prior to March 1, 2012, was slated for training at the TDY duty station.¹ The member was to perform his TDY as part of a group of personnel from various other stations operating together to provide medical services where they are needed in support of a contingency operation. The member claimed M&IE for the period of time he was attending training at the TDY station. The member was allowed a total of \$239.80 for two days, January 4 and January 5, 2012. The rest of the member's claim was denied on the grounds that the member lived locally to the TDY station. The member appealed the denial on the basis that he lodged with a friend near the TDY station for training. The Defense Finance and Accounting Service (DFAS) subsequently denied the member's claim on the basis that under paragraph U4102-E of Volume 1 of the Joint Federal Travel Regulations (JFTR), *per diem* may not be paid for TDY because the member's TDY station for the training was within his PDS local area.²

The DOHA adjudicator disallowed the member's claim for M&IE on the basis that the member was not required to lodge overnight at the TDY station, as set forth under paragraph U4102-E of the JFTR. The adjudicator found no language in the member's November 1, 2011, orders that directed or authorized the member to lodge overnight at his TDY station.

In his reconsideration request, the member attaches amended orders dated January 11, 2012, that clearly state that the member was authorized to stay overnight at his TDY station. These orders were not included in the record received by DOHA from the DFAS.

Discussion

This office must render decisions in accordance with applicable statutes and regulations. Claims are based on the written record as established by the agency involved and by evidence submitted by the claimant. The burden is on the claimant to establish the liability of the government.

In this case, the evidence before the adjudicator did not contain the member's amended orders. Based on the amended orders, we allow the claim. The record reflects that DFAS calculated that the member was due \$3,107.45 for M&IE during the period January 4, 2012, through February 17, 2012.

¹We note that the record reflects that the Commanding Officer of the medical battalion to which the member was assigned requested that certain personnel including the member be authorized M&IE at the commercial meal rate (CMR). This action was requested on the grounds that the use of the government mess would adversely affect mission performance and that those members had been issued orders specifying full *per diem* authorized throughout the duty at the TDY training station.

²Apparently DFAS later concluded that paragraph U4102-E did not apply to the member's case. DFAS concluded that U4102-E only applied to orders issued by the traveler's command. Since the member's travel orders had been issued by Headquarters in support of a contingency operation, DFAS recommended approval of the claim.

Conclusion

We allow the member's claim in the amount of \$3,107.45. Under DoD Instruction 1340.21 ¶ E7.15, this is the final administrative action by the Department of Defense in this matter.

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