

KEYWORDS: Waiver of Indebtedness

DIGEST: Claims against the government may be allowed only for expenses authorized by statute or regulation. 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. The Joint Federal Travel Regulations require members in a travel status to utilize available government quarters to the maximum extent practicable.

CASENO: 2012-CL-110601.2

DATE: 03/28/2013

DATE: March 28, 2013

In Re:)
 [REDACTED]) Claims Case No. 2012-CL-110601.2
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Claims against the government may be allowed only for expenses authorized by statute or regulation. 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. The Joint Federal Travel Regulations require members in a travel status to utilize available government quarters to the maximum extent practicable.

DECISION

A member of the U.S. Air Force Reserve requests reconsideration of the January 4, 2013, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims Case No. 2012-CL-110601. In that decision, this office denied the member's claim for *per diem* in the amount of \$6,907.37.

Background

Pursuant to orders issued on March 3, 2011, the member was performing temporary duty travel (TDY) at an air reserve base. On May 9, 2011, the member received orders directing him to perform TDY at another air force base for pilot training. The use of government quarters was directed, if available. Government mess was described as available, and its use was directed. On May 11, 2011, he reported for duty. On May 19, 2011, the member checked into the billeting office and was offered a room. However, the member chose to lodge off-base with a friend. The member signed a refusal log that warned him that reimbursement would be limited in accordance with regulations and the course instructions. Specifically, the refusal of government quarters stated:

As of this date 19 May 11, I refused Government (on-base/off-base) assigned quarters. I understand that [sic] is my responsibility to make off-base arrangements at my own expense. I also understand that according to the Joint Federal Travel Regulation program paragraph U1045, lodging reimbursement is limited to the On-Base Government Cost, and I will not receive Commercial Lodging Authorization or Non-Availability for reimbursement purpose. If at a later time I desire to move back on base, I will be given Priority 1 consideration.

On May 21, 2011, the member returned to the billeting office to procure a room. The member failed to notify the office that he had previously refused government quarters. The member was advised that no rooms were available for the remainder of his tour. Therefore, the billeting office issued the member a statement of non-availability (SNA). The member rented an apartment for the period May 21, 2011, through October 31, 2011, at the rate of \$975.00 per month. The first month was prorated at \$315.00, plus a security deposit of \$250.00.

The member was paid the lodging rate for government quarters at his TDY station, \$39.00 per day. Including other items, the total paid reimbursement for his tour was \$12,916.63. However, the member maintains that he was entitled to per diem based on the commercial lodging rates he paid, plus meals and incidental expenses (M&IEs). He states that his total per diem reimbursement should have been \$19,824.00, a difference of \$6,907.37. The member's claim was denied by the Comptroller, 94th Airlift Wing. The member appealed the denial to the Defense Finance and Accounting Service (DFAS). DFAS denied the member's claim on the basis of the Joint Federal Travel Regulations (JFTR) which states that when for personal choice the member uses other than government quarters, the reimbursement is limited to the government quarters lodging reimbursement cost on the U.S. Installation to which assigned TDY. DFAS further noted that the member was limited to the meal rate set forth by the schoolhouse commander.

The member appealed DFAS's denial of his claim to our office. The DOHA adjudicator disallowed the claim based on facts specific to the case involving Air Force regulations and their interpretation. However, we note that the JFTR will always take precedence over service regulations.

Discussion

Volume 1 of the JFTR, paragraph U1045, change 293, May 1, 2011, was the regulation that was in effect at the time of the member's travel. Under paragraph U1045-A(1), a member ordered to a U.S. Installation is required to check government quarters availability at the installation to which assigned TDY. Government quarters availability/non-availability must be documented. Paragraph U1045-A(4) states:

4. A member, as a prudent traveler, should use adequate available GOV'T QTRS on the U.S. INSTALLATION at which assigned TDY; however:
 - a. When adequate GOV'T QTRS on that U.S. INSTALLATION use is directed, and
 - b. Those QTRS are available on the U.S. INSTALLATION to which a member is assigned TDY, and
 - c. The member uses other lodgings as a personal choice,

lodging reimbursement is limited to the GOV'T QTRS cost on the U.S. INSTALLATION to which assigned TDY (44 Comp. Gen. 626 (1965)).

1. A member ordered to a U.S. INSTALLATION (as opposed to a geographical location like a town or city) is required to check GOV'T QTRS availability (e.g., through the CTO) at (not near) the U.S. INSTALLATION to which assigned TDY to facilitate the AO's decision about requiring GOV'T QTRS use.

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* DOHA Claims Case No. 2010-CL-120701.2; and B-205113, Feb. 12, 1982. It has been the consistent policy of the Department of Defense to require that government quarters will be utilized when available, and it has been the view of the Comptroller General in the past, as it is the view of this Office, that except as it may otherwise specifically provide, Congress intends that public quarters which it provides for the uniformed services must be used to the maximum extent practical. *See* DOHA Claims Case No. 96070229 (December 6, 1996); 44 Comp. Gen 626, 628, *supra*; B-176838, Mar. 12, 1973; and B-164618, Sept. 5, 1968. Further, the Comptroller General has held if a member declines an assignment to government quarters, the responsible installation commander may properly reassign the quarters to another person without thereby incurring any liability on behalf of the United States for payment of allowances to the member on the basis that government quarters are then unavailable for assignment to him, since commanders of military installations have no obligation to maintain unoccupied quarters for members who have voluntarily elected to reside elsewhere. *See* 60 Comp. Gen. 689 (1981); B-165327, Nov. 7, 1968; and B-164618, *supra*.

In this case, the member admitted to lodging off-base with a friend. He signed the refusal log and was on notice that he was only entitled to receive the On-Base Government Cost, and that he was not entitled to receive Commercial Lodging Authorization or Non-Availability for reimbursement purposes. When the member chose not to occupy available quarters the assignment of such quarters to another member did not establish his entitlement to the *per diem* allowance at the commercial rate. The government was not required to maintain empty single quarters available for assignment to the member in order to avoid liability for the quarters portion of *per diem*. The government's obligation was fulfilled when quarters were made available to the member. See *McVane v. United States* (1951); and 39 Comp. Gen. 561 (1960).

As pointed out by DFAS, this information was clearly explained in the *Training Information Policies and Standards* manual which the member read on June 3, 2011. Under paragraph U4155 of the JFTR, the schoolhouse commander is authorized to determine the appropriate meal rate. In this case, the member was notified by the commander that if he refused government quarters, his meal would be paid at 50 percent Proportional Meal Rate (PMR) and 50 percent Government Meal Rate (GMR).

Therefore, reimbursement of the amounts the member claims for lodging and meals is denied since the member was reimbursed in accordance with established regulatory guidelines and school policy.

Conclusion

The member's request for relief is denied, and we affirm the January 4, 2013, appeal decision. In accordance with DoD Instruction 1340.21 ¶ E7, this is the final administrative action of 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