DATE: December 23, 2013

In Re:	)	
[REDACTED]	)	Claims Case No. 2013-CL-081301.2
Claimant	)	

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

The Army found that the member had submitted fraudulent lodging claims during the period August 2004 through November 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 (DFAS).

DECISION

A former member of the U. S. Army Reserve (USAR) requests reconsideration of our Office's October 25, 2013, appeal decision in DOHA Claims Case No. 2013-CL-081301.

Background

The member was called to active duty (AD) from his residence in one state to another state. On August 31, 2004, the member purchased a residence for cash in a town 15 miles from his AD station. From August 2004 to November 2007, the member submitted monthly travel vouchers to DFAS indicating that he was renting the home that he actually owned. Supporting each monthly claim for rent was a receipt bearing the name of a business that was registered as a company on August 11, 2004, within the state where the member's AD station was located. The company's location was listed as the address of the member's home he purchased in August 2004, and the member was listed as the member/manager of the property.

In November 2007, the Army Criminal Investigation Command (CIC) received a report from Army Internal Review indicating that the member had claimed and received reimbursement for lodging at a rental property when in fact the member actually owned the house. The CIC

Report of Investigation (ROI) dated July 3, 2008, concluded that the member committed the offenses of false official statement, larceny, fraud and wire fraud when he submitted travel vouchers to DFAS claiming reimbursement for rent for a property he owned. The CIC reported the total loss to the government as $97,433.14. On September 4, 2008, the member was tried by general court-martial on the charges of false official statement, larceny and fraud. The member pled not guilty to all three charges and was convicted on all three counts. The member's sentence included a $15,000.00 fine and a written reprimand at the local level. The member subsequently paid the fine. On August 14, 2010, the Army reduced the member's fine to $12,000.00. On February 15, 2011, the Army informed the member that the findings and sentence of the general court-martial had been reviewed and were final and conclusive. The member resigned his commission in the USAR in April 2012.

DFAS subsequently calculated that the government had paid the member a total of $85,347.00 in lodging reimbursements for the rent he claimed on a property he owned during the period August 2004 through November 2007. DFAS therefore initiated recoupment against the member in the amount of $85,347.00. The member protested the collection action against him and DFAS subsequently denied the member's claim for $85,347.00.

The member appealed his claim to our Office. In his appeal, he maintained that the $15,000.00 fine was the difference between what he was entitled to and what he claimed. The member also noted the reduction in his fine from $15,000.00 to $12,000.00 in August 2010, and claimed the $3,000.00 difference. He also stated that he bought his house with two loans and thus had two mortgage interests. He claimed that because of the passage of time, he was unable to obtain copies of his utility bills. He also requested that if his claim was denied that the $3,000.00 refund from the adjusted fine be applied to his debt.

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the member's claim. The adjudicator found that from August 2004 through November 2007, the member sought payment for rent using fictitious receipts. The adjudicator found that the monthly claims made by the member were fraudulent.

In the member's reconsideration request, he states that items on a voucher that were not part of fraud can still be paid and cites 57 Comp. Gen. 664 (1978) in support of his claim for mortgage interest and reimbursement for utilities during the period August 2004 through November 2007. He states that he submitted corrected vouchers to DFAS in order to set off what he was actually entitled to receive. He requests that an offset from those corrected vouchers be made from the $85,347.00. He states that DFAS told him that they would not apply the $3,000.00 to his debt. He states that he has included his original appeal to DFAS which included copies of his corrected vouchers. He also states that he has made two payments of $185.46 in July and August. Moreover, he states that his final military paycheck was garnished for $227.32 and his 2012 Federal Tax return was garnished for $2,367.00. However, he states that these amounts have not been credited to the amount he owes.

Discussion

Under DoD Instruction 1340.21 (May 12, 2004), 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.

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, when discrepancies are minor, small in total dollar amounts, or when 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, when 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 evidence in the record is sufficient to establish a clear inference of fraud on the part of the member. The CIC investigation clearly revealed that the member committed fraud. In this regard, the CIC ROI determined that the member committed the offenses of false official statement, larceny, fraud and wire fraud when he submitted a fictitious lease agreement and lodging receipts claiming to rent a home which he owned. On September 4, 2008, the member was tried by a general court-martial and convicted of the criminal offenses of false official statement, larceny and fraud.[1]

The member cites 57 Comp. Gen. 664, *supra*, in support of his position that he should be reimbursed his mortgage interest and utilities during the period August 2004 through November 2007. In 57 Comp. Gen. 664, *supra*, the Comptroller General held that when an employee submits a voucher for subsistence expenses, each day's subsistence expenses constitute a separate item and that fraud for any subsistence item taints the entire per diem or actual expense claim for that day. However, claims for subsistence expenses on other days which are not based

[1]In addition, we note that the doctrine of *res judicata* is applicable in this case. We adhere to the same position that the Comptroller General explained in B-189935, Nov. 16, 1978. The doctrine of *res judicata* is that a valid judgment rendered on the merits constitutes an absolute bar to a subsequent action on a claim. Therefore, the doctrine of *res judicata* bars the member from later claiming in a civil or administrative proceeding that he did not commit fraud. *See* DOHA Claims Case No. 2012-CL-121902.2 (April 30, 2013); and B-189935, *supra*.

on fraud may be paid. The Comptroller General has identified this holding as the severability rule. *See* 60 Comp. Gen. 357 (1981). In 59 Comp. Gen. 99 (1979), the Comptroller clarified the holding in 57 Comp. Gen. 664, *supra*, and stated that it was applicable to military members. In 59 Comp. Gen. 99, the Comptroller General held that a fraudulent claim for lodging taints the entire claim for an actual expense allowance for days which fraudulent information was submitted and payments for those days will be denied the claimant. The Comptroller General stated that the general rule is that each separate item of pay and allowances is to be viewed as a separate claim, and only those separate claims which are fraudulent are to be denied. The Comptroller General was specifically asked whether a claimant who submits a fraudulent lodging receipt would be denied not only the amount allowed for lodging, but also the flat rate allowed for meals and subsistence expenses. The Comptroller General answered that a fraudulent representation of lodging costs taints the entire item of per diem for a given day. In addition, such a fraudulent submission for lodging submitted pursuant to an actual subsistence expense allowance taints the entire item of allowance for the specific day involved. We have followed this rule in our decisions. In DOHA Claims Case No. 05091301 (October 31, 2005), we held that a member's prior fraudulent submission for basic allowance for quarters (BAQ) vitiated any claim for payment of BAQ at the with-dependent rate based on his court-ordered support for his child. In DOHA Claims Case No. 2011-CL-071801.2 (May 21, 2012), we held that because fraud existed with regard to a member's claim for lodging reimbursement for several years, the member could not later reclaim lodging expenses even when they were actually incurred (mortgage interest and utilities) since fraudulent submissions are viewed as vitiating any payment arising out of the transaction.

As explained by the DOHA adjudicator in the appeal decision, the $12,000.00 fine was imposed by Army Headquarters pursuant to the court-martial order. This amount was imposed as a criminal penalty. The $85,347.00 being recouped by DFAS is a civil liability. Therefore, the two are separate and distinct, and the $12,000.00 may not be applied to reduce the amount DFAS is recouping from the member. In addition, the member must pursue reimbursement for the $3,000.00 reduction in his fine from the Army. As for the amounts already collected on the $85,347.00 debt, the member should contact DFAS concerning his remaining balance.

Conclusion

The member's request for reconsideration is denied, and we affirm the October 25, 2013, appeal decision in DOHA Claim No. 2013-CL-081301 disallowing the claim. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, 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: Gregg A. Cervi

Gregg A. Cervi
Member, Claims Appeals Board