

DATE: June 24, 2013

In Re: [REDACTED]

Claimant

)
)
) Claims Case No. 2012-WV-122003.2
)
)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Volume 1 of the Joint Federal Travel Regulation (JFTR), ¶ U4129-E, states that reimbursement for lodging cost is not authorized for a member who stays with a friend or relative.¹

DECISION

A member of the United States Coast Guard (USCG) requests reconsideration of the appeal decision, dated April 29, 2013, of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2012-WV-122003. In that case, this Office denied waiver in the amount of \$16,267.01.

Background

The member, a reservist in the USCG, was issued orders to Emerald Isle, North Carolina, for the period October 1, 2007, through November 20, 2007. These orders were subsequently extended through September 30, 2008. In connection with his orders, the member was authorized *per diem*. During the period November 1, 2007, through September 30, 2008, he received *per diem* payments, which included the cost of lodging, in the amount of \$28,626.01. However, the Defense Finance and Accounting Service (DFAS) later determined that the member resided with a friend, and was not entitled to lodging costs. The member was only entitled to meals and incidental expenses (M&IE) in the amount of \$12,359.00. Thus, the member became indebted to the government in the amount of \$16,267.01 (\$28,626.01 - \$12,359.00).

¹ The current version is now at 1 JFTR U4130-G per change 318, June 1, 2013.

The member contends that while he knew the individual with whom he was residing from a previous assignment at Emerald Isle, when they were supervisor and co-worker, they did not know each other personally at the time the rental began. He contends they did not become friends until after they resided with each other for some time. The member states that when he received his orders to Emerald Isle for November 1, 2007, he needed to report to work the next day and was quite anxious about finding a place to stay. He contends that on only one occasion, five years previously, at a cookout held at the unit supervisor's home, did he ever interact with the other individual outside of work. However, since this person recognized his need for housing, he offered the member the opportunity to stay with him at his house. Since the member was not well known to the individual's wife, she did not want him staying in their home. However, there was a Recreational Vehicle (RV) parked at the home, and he was allowed to stay there until he found something else. A lease was signed between the parties allowing for rent of \$1,500.00 for "the dwelling at [address] Unit A." The individual and his wife were planning on moving closer to their work, and so, after a couple of months when they had vacated the place, the member moved from the RV to the house. The lease still indicated that the member was renting "the dwelling at [address] Unit A" for the amount of \$1,500.00.

The discovery by the Coast Guard Pay and Personnel Center (PPC) that "Unit A" was an invalid address caused the command to initiate an investigation with the Coast Guard Investigation Service (CGIS). At this time the command determined the member was a friend of the individual from whom he was renting. CGIS requested that each person provide bank records to show deposits and withdrawals to substantiate rental transactions. After providing initial statements, both individuals stopped cooperating.

Discussion

Title 10, United States Code, § 2774, provides authority for waiving claims for erroneous payments of pay and certain allowances made to or on behalf of members or former members of the uniformed services, if collection of the claim would be against equity and good conscience and not in the best interests of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or any other person having an interest in obtaining the waiver.

The adjudicator determined that the offer for the member to stay in the other individual's RV, coupled with the individual's acknowledgment that they had been friends since 2004, indicated that the member entered into a lease with a friend. This Office has consistently held that a member is not entitled to reimbursement for lodging incident to temporary duty, where the lodging is rented from a friend or family member. *See* DOHA Claims Case No. 2012-WV-061201.2 (October 25, 2012); DOHA Claims Case No. 2009-WV-040805.3 (August 12, 2010); DOHA Case No. 09031102 (March 30, 2009); DOHA Claims Case No. 04020503 (February 18, 2004); and 60 Comp. Gen. 57 (1980).

The reason for this prohibition against reimbursement while lodging with friends or family is to eliminate potential abuses from occurring in connection with these claims. In this case, initially the member and the individual from whom he was renting made sworn statements

to the CGIS that the rent was paid by check or by cash, but it was always paid in full at the beginning of the month. Later, the member provided a statement, dated November 27, 2012, that on two occasions he wrote a check to the individual, and there were several occasions when he wrote a check for cash. Finally, he stated that the individual allowed him to pay him in increments, contrary to the lease agreement. The member did provide two copies of cancelled checks for \$1,500.00, and copies of statements of withdrawals from ATM machines for various amounts of cash which did not add up to the rent he should have been paying.

In his request for reconsideration, the member states that he stands by his statement that he was not staying with a friend. He has provided no new evidence to that effect. Therefore, the Board affirms DOHA's appeal decision. While our appeal decision and this reconsideration concern only the member's lodging costs, he contends that the Coast Guard is also collecting back the amount he received for M&IE. We are unable to comment on that assertion because we have no information on that subject in the record. The member should contact the Coast Guard PPC to raise any concerns he has in that regard.

Conclusion

The member's request for reconsideration for waiver of the overpayment of the lodging cost of \$16,267.01 is denied. In accordance with the Department of Defense Instruction 1340.23 ¶ E7.15, this is the final administrative action of the Department of Defense in this matter.

///Original Signed///

Jean E. Smallin
Chairman, Claims Appeals Board

///Original Signed///

Catherine M. Engstrom
Member, Claims Appeals Board

///Original Signed///

Natalie Lewis Bley
Member, Claims Appeals Board