

DATE: April 28, 2015

In Re:

[REDACTED]

Claimant

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Claims Case No. 2013-WV-021304.5

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Section 2774 of title 10, United States Code, provides authority for waiving claims for erroneous payments of pay and 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. Generally, these criteria are met by a finding that the claim arose from administrative error with 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.

DECISION

A former member of the United States Army Reserve requests reconsideration of the February 13, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-WV-021304.4. In that decision, this Office denied the member's request for waiver of \$92,212.58.

Background

The member was issued orders to active duty at Schofield Barracks, Hawaii, which were subsequently amended to extend until December 11, 2006. In connection with his active duty assignment, the member was authorized *per diem* (lodging, meals and incidentals). The Defense Finance and Accounting Service (DFAS) advised our Office that the member received lodging *per diem* in the amount of \$92,212.58, during the period January 12, 2004, through December 13, 2006. These amounts were detailed very specifically in the appeal decision. A later investigation determined that the member had claimed rental payments (lodging expenses) for a home that he owned and purported to rent to himself. Therefore, DFAS and the adjudicator

determined that the member was not entitled to be reimbursed for the rental (lodging) payments he received during that period.

The member resided in hotels when he initially arrived at the TDY (temporary duty) location, submitting claims in the approximate amount of \$85.00 per night through January 2004. The member purchased a home on January 10, 2004, to be closer to his work, and states that he was unable to find anyone in his command or several finance offices who could tell him what expenses he was entitled to claim. He states that DFAS-Indianapolis told him that rental receipts were the usual evidence to support claims for housing expenses. The member then signed a lease for the home that he owned and began submitting fictitious receipts in February 2004 for \$2,550.00 per month. In April 2005, the member increased the rent claimed for the property he owned, and he submitted false receipts for \$2,880.00 per month through December 2006.

The member also contends that no public mode of transportation was available to him and he had to arrive at work at 2:45 a.m. Because he was initially unable to get his orders to allow an authorization for a privately owned vehicle (POV), he purchased a vehicle at a substantial cost to himself. It is the member's position that he has legitimate claims that exceed the amount for which he is requesting waiver. The member contends that he was only asking for amounts that he was due. He states that while his actions may be described as "stupid," they were not criminal; and equity therefore demands that waiver be granted.

Discussion

Section 2774 of title 10, United States Code, 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. Generally, these criteria are met by a finding that the claim arose from an administrative error with 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 a waiver of the claim.

The member states that he could not get any assistance from his command or finance offices as to what he was entitled to claim for lodging expenses when he purchased his home. There may have been some confusion because the entitlement for allowable expenses was initially listed at Volume 1 Joint Federal Travel Regulations (JFTR) U4125, and the expenses were divided by the number of days per month the traveler was authorized lodging costs. On December 1, 2004, Change 216 was made to 1 JFTR U4137. The entitlement to allowable expenses when a residence was purchased and used for TDY lodgings was to be listed as monthly.¹ However, the overall entitlement was very clear.

From February 2004 through December 2006, the member submitted false receipts that indicated that he was renting the property from another person, when he was in effect renting the property from himself. Each month he submitted these receipts with a DD Form 1351-2, *Travel Voucher or Subvoucher*, which included a Penalty Statement that read, "There are severe

¹ Allowable expenses were: 1. Interest; 2. Property tax; and 3. Utility cost actually incurred (does not include any installation and hook-up charges).

criminal and civil penalties for knowingly submitting a false, fictitious, or fraudulent claim (U.S. Code, Title 18, Sections 287 and 1001 and Title 31, Section 3729).”

The member admitted submitting the false vouchers. He was discharged in lieu of trial by Court-Martial on June 9, 2009, Under Other Than Honorable Conditions. On September 1, 2010, the Army Review Board Agency reviewed his request to upgrade his separation characterization to Honorable and denied his request. As a senior officer with over twenty years of experience, the member should have known that submitting fictitious rental receipts was at least questionable. After a review of the file and the travel documents he submitted, we must hold him at fault in the matter, which statutorily precludes favorable waiver consideration. *See* DOHA Claims Case No. 2012-WV-082016.2 (March 19, 2013).

The member requests reconsideration in this case due to DFAS’ alleged losing or destroying records important to properly adjudicate the case. In our February 13, 2015, appeal decision, this Office indicates that we requested additional information from DFAS and that DFAS provided some but not all of the documentation. Our Office is extremely thorough, and we attempt to obtain any and all documents that we believe may have any theoretical connection with the file. However, we do not adjudicate a case unless we have sufficient information to do so. Moreover, if the member thought any significant documentation was missing, he could have provided it to DOHA when he submitted his request for reconsideration. We note that the documentation provided in the file from DFAS is voluminous.

In response to the adjudicator’s statement that there was no evidence of the cost of the mortgage and other reimbursable expenses, in particular the Settlement Statement (HUD-1), the member indicated that he had previously provided that documentation along with “a representative sample” of expenses. The file does not contain the HUD-1. The representative sample was one mortgage bill, one electric bill, and one phone bill. Prior to this, all that had been provided were lists of amounts generated by the member with nothing to support them. It is important to note that this decision is for waiver, and if the member wanted to file a claim for his actual lodging expenses, he could do so with his unit or with the United States Court of Federal Claims, as he was told by the Contingency Travel Office on August 14, 2009, and also by DFAS on November 9, 2012. However, the member has also been advised that such an administrative claim would probably be denied since false submission of a claim nullifies a member’s subsequent “legitimate” claim for the same false transaction. Based on our case law, the member would most likely be precluded from reimbursement for his actual lodging expenses, even if he files new travel vouchers with legitimate receipts, because the original travel vouchers that were filed were false. *See* DOHA Claims Case No. 2011-CL-071801.2 (May 21, 2012).

The member assigns blame for the incident on the failure of DFAS and not his actions. Shortcomings on the part of DFAS, real or perceived, do not vitiate the member’s fault in submitting false rental receipts. The member’s action precludes waiver. The member nonetheless continues to contend that, in fact, he is owed more for the same time frame than the amount for which he is requesting waiver. As previously stated, this is a reconsideration request

for waiver, not a claims decision. However, we note that among the amounts he lists are items which would not be payable if claimed.²

Conclusion

The member's request for reconsideration is denied, and the February 13, 2015 appeal decision is affirmed. In accordance with the Department of Defense Instruction 1340.23 ¶ E8.15, this is the final administrative decision 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

² The member was finally able to have his orders amended to authorize shipment of a POV (privately owned vehicle). That authorization would not authorize purchase of a vehicle at his TDY location, nor would it authorize mileage in and around his duty station. Both of these are items listed as due the member. Additionally, the member has listed a Voluntary Separation Incentive (VSI) payment in August 2009 for \$9,200.00 that he says DFAS seized. DFAS has already told the member in a letter dated November 9, 2012, that since he was discharged on June 10, 2009, Under Other Than Honorable Conditions, he was no longer entitled to receive VSI per Department of Defense Financial Management Regulations (DoDFMR) Volume 7A, paragraph 350801(F). (“The member must accept voluntary appointment or enlistment in, or transfer to the Ready Reserve, and must continue to serve in a Reserve Component during the entire period of eligibility for VSI. If the member does not continue to serve in the Ready Reserve, then the VSI installments terminate on the date of the separation from the Reserve Component or transfer to the Retired Reserve.”)