

DATE: December 30, 2014

In Re:)

[REDACTED])

) Claims Case No. 2014-CL-091601.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

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.

DECISION

A member of the United States Air Force Reserve (USAFR) requests reconsideration of the appeal decision dated November 14, 2014, of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2014-CL-091601. In that decision, this Office denied the member's claim in the amount of \$153.00.

Background

A member of the USAFR received travel orders on AF Form 938, *Request and Authorization for Active Duty Training/Active Duty Tour*, to perform annual training (AT) for seven days, May 7 through May 13, 2013, plus two days travel time. This AT was to be performed at a post in Virginia and a base in Florida. The request was approved on April 11, 2013, and issued to the member on April 12, 2013. On that order, paragraphs m and o, respectively, stated that Government quarters and Government messing would not be available at the post in Virginia, May 6 through 9, 2013. Paragraph l (letter L) stated that at the base in Florida, Government quarters were directed if available, May 10 through 14, 2013. Paragraph n stated that Government messing was available and directed, May 10 through 14, 2013.

The specifics of the vouchers submitted and the payments allowed are outlined thoroughly in the appeal decision. At issue here is the fact that the member was allowed *per*

diem payments of \$53.25 per day for lodging for May 11 and 12, 2013, but no lodging for May 13, 2013. Moreover, the member was not allowed any meals and incidental expenses (M&IE) for May 11 through 13, 2013.¹ These were the days the member stayed at a base in Florida, and his orders stated that Government quarters were directed, if available, and Government messing was available and directed. The member stayed in lodging which was part of the Air Force Inns system and was Government quarters, and it was available. The member was performing AT during this time period.

The member claimed \$51.00 per day for M&IE or “at least partial *per diem*” for those days when M&IE was not allowed. He claims that since there were charges for Government dining or mess facilities, he should be allowed *per diem*. The member states that regular component members of the uniformed services are paid *per diem* for days when Government dining or mess facilities are not provided free of charge. He alleges that Reserve Component (RC) members are treated differently under the same circumstances.²

Discussion

The well-established rule is that a claim can be paid only if there is a basis for such payment in statute or regulation. *See* DOHA Claims Case No. 2010-CL-120701.2 (January 20, 2011), and Comptroller General decision B-205113, Feb.12, 1982. Claims are adjudicated by our Office on the basis of the statutes and regulations in effect at the time of the travel at issue. *See* DOHA Claims Case No. 02062502 (July 31, 2002).³ The first issue to be addressed is which regulation applies to the travel at issue: 1 JFTR Chapter 4, which applies to the TDY travel of uniformed service members in general, or 1 JFTR U7150, which specifically applies to the travel of RC members on active duty. When a general provision and a specific provision of a statute or a regulation apply to a particular situation, the specific provision is followed. *See* Comptroller General decision B-180109, Jan. 2, 1976. Since the member performed the travel at issue as an RC member on active duty, 1 JFTR U7150 applies.

For an RC member on active duty for training (ADT), 1 JFTR U7150-E1a authorizes the payment of TDY travel and transportation allowances under 1 JFTR Chapter 4 when the ADT period is less than 140 days at any one location.⁴ However, for an RC member on AT, 1 JFTR U7150-C1a states:

C. Per Diem/AEA [actual expenses allowance] Not Authorized for Certain Active Duty Periods

¹ The term *per diem* is inclusive of lodging and M&IE. The rates for both vary by location. Whether a traveler is entitled to both or either is dependent on the instructions in the orders, the status of the traveler, availability of either at U.S. installation, etc. The rules governing temporary duty (TDY) travel are available in Joint Travel Regulations (JTR), previously Volume 1, Joint Federal Travel Regulations (JFTR).

² The member was initially denied lodging costs, but he received the lodging costs after refiling his voucher and pointing out that while Government lodging was provided, it was at a cost.

³ Unless otherwise stated, the citations from Volume 1, JFTR, that follow are as they existed during the period at issue in May 2013, *i.e.*, updated through Change 317, May 1, 2013.

⁴ Effective Change 322, October 1, 2013, the provisions in 1 JFTR U7150 were moved to 1 JFTR U7600. Effective October 1, 2014, this paragraph of 1 JFTR was moved to JTR, paragraph 7355.

1. Per Diem/AEA. There is no authority for per diem/AEA, under par. U7150, for a:

a. Member performing AT when both GOV'T QTRS (other than temporary lodging facilities) and a GOV'T dining facility/ mess are available.

That restriction is stated again in table U7G-1 at 1 JFTR U7180.⁵ In 1 JFTR Appendix O, paragraph T4045-D⁶ further states:

D. Per Diem Not Payable. No per diem is payable to:

1. An RC member at an AT site when both GOV'T QTRS and GOV'T dining facility/mess are available; however, the member is authorized reimbursement for the GOV'T QTRS cost. If GOV'T QTRS and/or GOV'T dining facility/mess are not available, per diem is payable under par. T4040-A; . . .⁷

The member restates his general point that RC members are being treated differently and therefore unfairly. He understands the concept that reimbursement may only be paid for an expense authorized by statute or regulation. He argues that it is totally arbitrary and capricious to identify AT status as being more specific than TDY status. On that point, he is not correct. The TDY status applies to the travel of all uniformed service members in general. The AT status specifically applies to RC members on active duty, clearly a more specific subset.

The member argues that the meaning of available must be consistent in the lodging and the dining facilities/messing. In other words, lodging is available, but has a cost which is reimbursed. Messing is available and has a cost, but is not reimbursed. This is an argument which has been raised before. *See generally* 48 Comp. Gen. 517 (1969).

Generally, the member argues that the JFTR/JTR is unfairly balanced between active and reserve members. In the face of a specific regulatory provision of the JFTR or JTR, this Office must apply the specific provisions to the facts at hand. If the member wishes to change the JTR, he should direct his concerns to his member of the Per Diem Committee at:

Air Force Member
The Per Diem, Travel and Transportation Allowance Committee
4800 Mark Center Drive
Suite 04J25-01
Alexandria, VA 22350-9000

⁵ This rule was later moved to table U7-Z1, 1 JFTR U7650-A. Effective October 1, 2014, this provision of 1 JFTR was moved to JTR, paragraph 7405-A, table U7-K1.

⁶ Effective October 1, 2014, this provision of 1 JFTR was moved to JTR, Appendix O, paragraph T4045-D.

⁷ This rule is restated in the Air Force Instruction (AFI) 65-114, paragraph 6.6.1.

Additionally, until such time as the provision in the JTR is changed, the member will be unable to obtain the compensation that he seeks. At 1 JFTR U2205,⁸ Retroactive Order Modification and Authorization/Approval states:

A. Modifications

1. An order:

- a. May be retroactively corrected to show the original intent, and
- b. ***Must not be revoked/modified retroactively to create/deny/change an allowance*** (24 Comp. Gen. 439 (1944)). . . .

There was no intent to permit him an allowance that the JFTR/JTR does not permit, and retroactively modifying his orders is not allowed. So, until such time as the JTR is changed, this Office has no authority to allow this compensation regardless of the member's argument.

Conclusion

The member's request for reconsideration is denied, and the appeal decision of November 14, 2014, is affirmed. In accordance with the Department of Defense Instruction 1340.21 ¶ E7.15, this is the final administrative action of the Department of Defense with respect to this claim.

///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

⁸ Effective October 1, 2014, this provision of 1 JFTR was moved to JTR, paragraph 2205.