

DATE: February 2, 2016

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In Re: )  
[REDACTED] ) Claims Case No. 2015-CL-090102.2  
Claimant )  
)

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The Army found that a member had submitted fraudulent lodging claims during the period January 2006 through December 2006. 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 retired member of the U. S. Army Reserve (USAR) requests reconsideration of our Office's October 27, 2015, appeal decision in DOHA Claims Case No. 2015-CL-090102, which disallowed the member's claim for reimbursement for lodging deemed fraudulent.

**Background**

The member was called to active duty (AD) from his residence in Roanoke, Virginia, to Alexandria, Virginia. He accepted the offer of housing through the Army. When his AD orders were extended, he was granted permission to move into a condominium. During the period January 2006 through December 2006 the member submitted travel vouchers claiming monthly lodging expenses ranging from \$3,612.00 to \$3,999.00. The member submitted each of his 12 claims for lodging with an invoice from a company he owned.

In February 2008 the Army Criminal Investigation Command (CIC) received a report from Army Internal Review indicating that the member had possibly submitted fraudulent travel vouchers. The CIC discovered that the condominium that the member rented was owned by his mother and father and that the member was the registered agent of the company whose name appeared on the invoices he submitted with his lodging claims. The CIC also found that the

member paid his father \$1,600.00 per month for rent of the condominium for the period January 1, 2006, through December 31, 2006.

The CIC Report of Investigation (ROI) dated September 23, 2008, concluded that the member committed the offenses of false official statement, larceny, fraud and wire fraud when he submitted travel vouchers to DFAS. The CIC estimated the total loss to the government to be \$27,885.00, the difference between the total amount of rent claimed and reimbursed, \$47,085.00, and the total rent actually paid, \$19,200.00 (12 months x \$1,600.00 per month).

DFAS subsequently initiated recoupment against the member in the amount of \$47,085.00. The member protested DFAS's collection action against him. DFAS responded to the member noting that the rental invoices that the member submitted for the period January 1, 2006, through December 31, 2006, were from the company he owned and that his company was not the landlord of the condominium he rented. For these reasons, DFAS concluded that the invoices were fraudulent. DFAS also stated that the amounts on the invoices were much greater than the amounts of rent the member actually paid.

The member retained counsel and appealed his claim to our Office. In his appeal, he stated that he ran his living expenses through a company that he owned for the purposes of management and that he did so for tax purposes. The member also stated that he submitted the same amounts for housing in 2006 that he submitted in 2005, and that he acted on erroneous advice and without fraudulent intent. The member submitted copies of 12 checks he issued to his father during the period January 2006 through December 2006, totaling \$20,800.00. Those checks were for payment of \$1,600.00 monthly rent for the condominium, except one check included an additional \$1,600.00 for the security deposit. Excluding the security deposit, the member paid \$19,200.00 in rent. The member also included copies of monthly bills for furniture rental, copies of checks for house cleaning, cable and telephone bills. The member stated that \$30,050.10 in living expenses for the period at issue could be documented. The member asserted that he should only be liable for \$17,034.90, the difference between the amount being recouped from him minus his allowable and/or correctly or properly incurred expenses (\$47,085.00 - \$30,050.10).

In the appeal decision, the DOHA adjudicator upheld DFAS's denial of the member's claim. The adjudicator found that from January 2006 through December 2006, 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 continues to assert that he did not intend to commit fraud. He states that he made an innocent mistake. In this regard, the member states that he ran his living expenses through a company he owned for the purpose of management and made a mistake when he relied on the guidance of his finance officer by charging the same amount in his vouchers as he had previously been allocated, *i.e.*, a *per diem* rate of \$129.25 per day. He admits that he acted incorrectly by submitting vouchers based on a *per diem* rate rather than the actual amount he paid in rent. He admits that he did not follow the proper procedures but his actions did not constitute fraud as he had no intent to deceive. As for the adjudicator's concern that he used a company he controlled for submission of the vouchers, the member

asserts that these types of real estate companies are a normal way of doing business in the civilian world and are used for record keeping and tax considerations. He states that the company he owned was already in existence and he did not establish it for the purposes of the submission of his vouchers. The member further states that it is significant to note that the CIC did not follow up by pressing criminal charges. He asserts that the cases cited by the adjudicator in the appeal decision are distinguishable from the facts in his case because there was no element of intent to commit fraud in his case. Therefore, he requests that the amount he owes be established as \$17,034.90 which he maintains is the difference between what he was paid and the amount he has shown he actually spent.

### **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. *See* DOHA Claims Case No. 2013-CL-081301.2 (December 23, 2013); DOHA Claims Case No. 2012-CL-121902.2 (April 30, 2013); and DOHA Claims Case No. 2011-CL-071801.2 (May 21, 2012).

The Department of Defense Financial Management Regulation (DoDFMR), Volume 5, Chapter 25, further defines fraud as follows:

Fraud is any intentional deception designed to deprive the United States (U.S.) unlawfully of something of value or to secure from the U.S. a benefit, privilege, allowance, or consideration to which a claimant is not entitled. For example, a

person submits a claim for reimbursement of a taxi fare for \$70, knowing that the actual fare was only \$20, intending to obtain more money than the person is entitled to receive. The amount claimed is \$50 more than the entitlement (misrepresentation of a material fact). The claimant knows the actual cost but claims more (intent to deceive), and the government is entitled to rely on the truthfulness of the amount claimed.

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 created invoices on behalf of a company he owned but was not the landlord for the condominium he was renting from his parents. A review of the monthly invoices created and submitted by the member reflect that he was claiming that he was paying rent in the amount of \$129.00 per day, or \$3,999.00 per month (\$129.00 times 31 days), when in actuality he was paying \$1,600.00 per month in rent to his parents. The member created the monthly invoices on the letterhead of a company that was not the landlord of the condominium and was a company he owned. Of note is that the member conveniently removed his surname from the name of the company he owned and used to submit his vouchers. Therefore, the method the member used in claiming reimbursement for lodging involved glaring discrepancies and large sums of money over a period of twelve months.

As for the member's assertion that he actually spent \$30,050.10 in living expenses for the period at issue, our office follows the decisions of the Comptroller General. The Comptroller General held that a fraudulent representation of lodging costs taints the entire item of lodging costs for a given day. 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, *supra*, we held that because fraud existed with regard to a member's claim for lodging reimbursement, 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, although the member may have sought guidance regarding his lodging claims, and his requests were either ignored or answered erroneously, the government is not bound or made liable by the erroneous advice of its officers, employees and agents. *See* DOHA Claims Case No. 09032301 (April 2, 2009).

Finally, we note that even if the government had not met its burden of establishing fraud, this does not mean the member necessarily is entitled to payment on all his claims. The record reflects that the member was making payments to a rental company that he owned for a condominium owned by his parents. There is no authority under the Joint Travel Regulations (JTR) to reimburse him for his lodging costs. Specifically, JTR ¶ 4130-G1 states that lodging reimbursement is not authorized for a member who lodges with a friend/relative at the friend's/relative's residence. *See* DOHA Claims Case No. 2012-CL-121902.2, *supra*; and DOHA Claims Case No. 09031102 (March 30, 2009).

## Conclusion

The member's request for reconsideration is denied, and we affirm the October 27, 2015, appeal decision in DOHA Claim No. 2015-CL-090102 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

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board