

DATE: March 8, 2016

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In Re:

[REDACTED]

Claimant

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) Claims Case No. 2015-CL-120101.2  
)  
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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

A member purchased tickets from a foreign flag carrier in violation of the Fly America Act, 49 U.S.C. § 40118. Reimbursement of the member is not proper, as claims against the government may be allowed only for expenses authorized by statute or regulation. Lack of awareness of the law does not justify failure to comply with it.

**DECISION**

A member requests reconsideration of the appeal decision dated February 8, 2016, by the Defense Office of Hearings and Appeals (DOHA). In that case, DOHA declined to reimburse the member's claim for flight costs from England to Alaska.

**Background**

The record indicates the member was in service of the United States Air Force (USAF), and he initially retired on June 1, 2005. He was called back to active duty on October 15, 2010. He was assigned to the 48<sup>th</sup> Fighter Wing (48 FW) Royal Air Force Base (RAF) Lakenheath, England, United Kingdom (U.K.). On October 23, 2013, the member was issued his retirement orders. Those orders returned the member to the USAF Retired List effective October 15, 2014. Permanent change of station (PCS) travel was authorized, and the orders stated that the member had one year from the date of his relief from active duty to select and move to a home.

After the member's retirement, he remained in the RAF Lakenheath area for a short period of time. On April 15, 2015, a federal agency made the member a firm offer of a position in Anchorage, Alaska, and he accepted the offer the next day by email. The member reports that on April 20, 2015, he went to the Scheduled Airlines Traffic Offices, Inc. (SATO Travel), location at RAF Lakenheath, the contract commercial travel office (CTO) at that base, to reserve

his air travel to Alaska. The member stated that the CTO advised him that he could purchase the tickets for travel himself and be reimbursed through the 48<sup>th</sup> Comptroller Squadron (48 CPTS). The member further states that he visited the 48 CPTS Help Desk and they advised him that while he could obtain help from the Accounting and Finance Office at Elmendorf AFB, Alaska, he would have to file his travel voucher with the 48 CPTS.

On May 1, 2015, the member purchased tickets for travel on June 7, 2015, on Icelandair Flights FI 451 and FI 679 from London-Heathrow Airport (LHR), England, U.K., via Keflavik International Airport (KEF), Iceland, to Ted Stevens Anchorage International Airport (ANC), Alaska. Total cost of the tickets was \$1,030.26, and they were purchased electronically from Icelandair North America.

The member completed the travel and filed his DD Form 1351-2, *Travel Voucher or Subvoucher*, dated June 29, 2015, with 48 CPTS. As outlined in the appeal decision dated February 8, 2016, the member's claim has been denied because that the member violated the Fly America Act, 49 U.S.C. § 40118. The Fly America Act establishes the general rule that official air travel performed at government expense must be on carriers certificated in the United States, popularly known as U.S. flag carriers, when such service is available. The implementing regulation for uniformed service members is located at Joint Travel Regulations (JTR), paragraph 3525. The full citation was given in the appeal decision.

Icelandair's corporate headquarters are located at Reykjavik Airport, Reykjavik, Iceland. Iceland aircraft have tail numbers beginning with the letters TF, indicating they are registered in Iceland. Icelandair is thus an Icelandic flag carrier. Foreign flag carriers have code sharing agreements with U.S. flag carriers. Icelandair has code sharing agreements with two U.S. flag carriers, Alaska Airlines, Inc., and Jetblue Airways Corporation, (International Air Transport Association codes AS and B6, respectively). If the member had traveled on flights that were listed as code share flights, they would not have violated the Fly America Act. The copy of the member's electronic ticket in the file shows that both flight numbers were prefixed with the letters FI, not AS or B6. The only carrier identified by name on the ticket was Icelandair. Both flights at issue were therefore on Icelandair, a non-U.S. flag carrier.

In the appeal decision, the member made three arguments: first, that he relied upon erroneous advice from the CTO at RAF Lakenheath; second, that the cost of flying on Icelandair was one-third to one-half the cost of flying on other carriers; and third, that he was unaware of the Fly America Act. The adjudicator answered the member's second argument by stating that purported savings in costs do not allow a claim that otherwise cannot be allowed. *See* DOHA Claims Case No. 97041006 (August 26, 1997). The adjudicator answered the member's third argument by stating that a member's lack of knowledge of a travel regulation or statute does not establish entitlement to a payment not authorized by the applicable laws or regulations. *See* DOHA Claims Case No. 97121518 (February 10, 1998), and DOHA Claims Case No. 09032301 (April 2, 2009).

In his request for reconsideration, the member reiterates his argument that he relied upon the advice of both SATO and 48 CPTS personnel at RAF Lakenheath for professional guidance on how to proceed. After lengthy service in the Air Force, the member states that he expects to

be able to rely upon the guidance of a senior Non-Commissioned Officer, whom normally he would consider a subject matter expert. This Office reiterates the determination made by the adjudicator in the appeal decision. That is, the member was not given appropriate assistance by either the CTO or the 48 CPTS who could have procured the tickets for the member as the flights were official travel; or at a minimum, they should have advised him of the Fly America Act. However, the fact that the member was given misinformation by both transportation officials and military officials regarding reimbursement for travel, does not provide a legal basis for reimbursement, since the government is not liable for the erroneous or negligent actions of its officers, agents, or employees. *See* DOHA Claims Case No. 96070222 (January 27, 1997).

### **Conclusion**

The member's request for reconsideration is denied and the appeal decision of February 8, 2016, is affirmed. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

*///Original Signed///*

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Jean E. Smallin  
Chairman, Claims Appeals Board

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Catherine M. Engstrom  
Member, Claims Appeals Board

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Natalie Lewis Bley  
Member, Claims Appeals Board