

DATE: October 20, 2016

In Re:)

[Redacted])

) Claims Case No. 2016-CL-062701.2

Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Claims against the government may be allowed only for expenses authorized by statute or regulation. Granting an extension of the post-retirement travel and transportation allowances period under the Joint Travel Regulations is considered an administrative matter over which the military has broad discretion. Therefore, the Defense Office of Hearings and Appeals has no authority to extend the member's entitlement.

DECISION

A retired member of the U.S. Marine Corps (USMC) requests reconsideration of the September 15, 2016, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2016-CL-062701. In that decision, this office determined that DOHA has no authority to grant the member's request for extension for travel and transportation allowances incident to his retirement.

Background

On March 30, 2015, the member retired from the USMC due to physical disability. On May 22, 2015, the member requested that the period for travel and transportation allowances incident to his retirement be extended through the end of the 2017/18 school year to accommodate his special needs child's completion of high school and job training without changing schools. The USMC Logistics Distribution Policy Branch (LPD) extended the member's travel and transportation allowances period to March 30, 2017. The LPD explained to the member that it was USMC policy to limit extensions to one year per extension and the LPD would only accept requests for extensions in one-year increments. The member appealed his

request for extension to the Defense Finance and Accounting Service (DFAS). DFAS subsequently recommended denial of the member's request on the grounds that the approval of the extension was at the discretion of the member's service under applicable regulations.

The DOHA adjudicator determined that under the applicable regulations set forth under the Joint Travel Regulations (JTR), DOHA has no authority to grant an extension for the period of travel and transportation allowances at government expense. In his appeal, the member contends that he is entitled to the extension under JTR paragraph 5068-B4c. He states that the service's discretionary authority is to approve or deny an extension. He states that once the service exercises its discretion and approves an extension, it must meet the "specific period of time" obligation imposed by JTR paragraph 5068-B4c. Therefore, he asserts that once the LPD granted his extension, he was authorized the full period of time he anticipated that he needed to complete his move.

Discussion

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. A member must prove by clear and convincing evidence on the written record that the United States Department of Defense is liable under the law for the amount claimed. *See* DoD Instruction 1340.21 (Instruction) ¶ E5.7 (May 12, 2004). Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. Thus, the liability of the United States is limited to that provided by law (including implementing regulations).

Travel and transportation allowances are governed by 37 U.S.C. §§ 474 and 476. Under 37 U.S.C. § 474(c), a member who is retired may not later than one year from the date he is retired, except as prescribed in regulations by the Secretaries concerned, select his home for the purposes of travel and transportation allowances at government expense. Under implementing regulations of these statutes (Joint Travel Regulations (JTR) paragraph 5068), travel must be completed within one year of retirement from active duty unless an extension is granted by the Secretarial Process. The Secretarial Process is defined as action by the Secretary of the member's service or by the official or activity delegated to grant such an approval. *See* JTR App. A.

In this case, USMC has delegated the authority for granting extensions to the LPD. The LPD granted the member's request for an extension for one year under paragraph 5068B4a. Specifically, paragraph 5068-B4a states that an extension of the one-year time limit "may be authorized/approved by the Secretarial Process for a period NTE six years when an unexpected event beyond the member's control prevents the member from moving . . ." This clearly indicates that the LPD has discretion to approve or disapprove an extension for a certain period not to exceed six years. The member argues that once the LPD granted the extension that they were bound to the period of time he anticipated that he needed to complete his move. However, where the JTR gives discretion to the military authorities to grant extensions, this office will not disturb the determination of the period of time for the extension specified by those authorities, since military authorities have broad discretion over these types of administrative matters. *See*

DOHA Claims Case No. 2014-CL-062401.2 (October 16, 2014); DOHA Claims Case No. 07072307 (August 10, 2007); DOHA Claims Case No. 00090820 (February 26, 2001); DOHA Claims Case No. 97111901 (December 12, 1997); and Comptroller General decision B-244598, Oct. 2, 1991. The determination of the length of the extension is left to the judgment of the service concerned and does not come within the purview of this office. *See* DOHA Claims Case No. 04022604 (March 8, 2004); and DOHA Claims Case No. 96070230 (February 19, 1997).

Even if DOHA had the authority to question the LPD's interpretation of the JTR, the fact that the member may be able to offer a plausible construction of the regulation which supports his position is of no consequence. A finding of reasonableness with respect to an agency's interpretation of a statute does not require that the agency's interpretation be the only possible construction, or even the most desirable one. Where there is more than one reasonable interpretation, a reviewing administrative board such as this one must accept the interpretation adopted by the administrative authorities responsible for its interpretation and implementation. *See* DOHA Claims Case Nos. 02101611 through 02101635 (December 12, 2002).

Conclusion

The member's request for reconsideration is denied, and we affirm the September 15, 2016, decision in DOHA Claim No. 2016-CL-062701 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

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board