

February 28, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 00010408

CLAIMS APPEALS BOARD DECISION

DIGEST

A member was attending graduate school while awaiting Medical Evaluation Board (MEB) proceedings. The member preferred to have the MEB performed at the military hospital in Hawaii where his injuries had been treated. Before travel orders had been issued directing him to an MEB, the member scheduled an MEB for himself in January 1998 at the hospital in Hawaii and in December 1997 purchased tickets directly from an airline company for his travel there. When orders were later issued to confirm verbal orders of January 1998 directing the member to make two trips to Walter Reed Army Medical Center (WRAMC) for MEB proceedings, the member submitted for reimbursement the receipts for his trip to Hawaii. Reimbursement was denied. The member may not be reimbursed for his travel because he had not received travel orders before he purchased airline tickets as required by paragraph (¶) U2100 of volume 1 of the Joint Federal Travel Regulations (JFTR), and in fact he was never ordered to travel to Hawaii. Reimbursement is also not proper because he did not purchase the tickets through an approved source as required by 1 JFTR ¶ U3120-A. Although the member was denied reimbursement for his travel, he was paid per diem totaling \$568 under the WRAMC orders, even though he did not travel to WRAMC. DFAS may recoup the \$568 from the member because he was not in a travel status on the dates for which per diem was paid, since he did not have travel orders for the travel he performed as required by 1 JFTR ¶ U2200-A.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 99071612, dated October 22, 1999, which denied the travel claim of a military member. The member claimed reimbursement for travel performed in connection with a medical evaluation.

Background

The member suffered traumatic amputation of all five fingers of his left (non-dominant) hand when a grenade exploded prematurely in his hand in Okinawa, Japan, in October 1995. He received medical care in Okinawa and then at Tripler Army Medical Center, Hawaii (Tripler). The member was a patient at Tripler (as an in-patient and later as an out-patient) from October 1995 until June 1997. He then moved to Massachusetts to begin graduate studies in the fall of 1997. He was still on active duty at that time and was assigned a nearby ROTC unit.

Medical personnel at Tripler were unable to complete Medical Evaluation Board (MEB) proceedings for the member

while he was still in Hawaii. The member states that he was advised at Tripler that MEB proceedings had to be completed within 180 days of his move to Massachusetts, although Defense Finance and Accounting Service (DFAS) personnel state that they have been unable to verify that deadline. In order to meet that deadline, the member requested travel orders to Tripler during a winter break in his studies and was advised that his unit had no funds for such travel. In a memo dated December 17, 1997, the member stated that he wished to have the MEB performed at Tripler and that he accepted financial responsibility for travel to Hawaii. On December 24 he purchased tickets directly from the airlines. He flew to Hawaii on January 8, 1998, and returned on January 26-27, 1998. The member was placed on the Permanent Disability Retired List effective January 21, 1999. Travel orders were issued in March 1999 to confirm that the member was verbally commanded in January 1998 to make two trips to Walter Reed Army Medical Center (WRAMC) in Washington, DC, which is the place closest to Massachusetts where MEB proceedings could be performed. In April 1999 the member submitted two travel vouchers pursuant to the March 1999 orders. With the vouchers he submitted receipts for his airfare to Hawaii, hotel room there, and other expenses associated with his trip to Hawaii. The member was not reimbursed for the receipts for his Hawaiian travel, but he received per diem payments totaling \$568 for travel under the March 1999 travel orders. DFAS asks whether the per diem can be recouped.

In DOHA's Settlement Certificate the member's travel claim was denied because he traveled without travel orders, procured his tickets directly from the airlines, and upgraded his tickets to first class. The member argues that he traveled to Hawaii on official business in January 1998 under verbal orders. He contends that he satisfied the Joint Federal Travel Regulations (JFTR) when he purchased his airline tickets because the price he paid was no more than a government travel office would have paid for the tickets. He also states that he paid coach fare and then upgraded his tickets to business class in a manner acceptable under the JFTR.

Discussion

It is a well-established rule that a member cannot be reimbursed for military travel unless he has received, before he purchases tickets, written or verbal orders for the travel performed. *See* 1 JFTR paragraph (¶) U2100. In the case before us, the record contains a December 1998 letter from the member's commanding officer to the member stating that no orders were ever issued for the member's travel to Hawaii. Also included in the record is December 1997 correspondence from the member to Tripler stating that for personal reasons the member chose to have his MEB proceeding at Tripler and would bear the cost of the trip himself. According to the record, orders were issued in March 1999 for the member to travel to WRAMC twice in January 1998 for his MEB. The orders state that they were written to confirm verbal orders of January 11, 1998, and January 21, 1998. The member cannot be reimbursed under these orders because he did not travel to the place designated in the orders and purchased tickets more than two weeks before the verbal orders were issued and more than a year before the written orders were issued.⁽¹⁾ While the member's former commanding officer now states the opinion that the member should be reimbursed up to the cost of travel to WRAMC, we must render decisions in accordance with the applicable statutes and regulations. *See* DOHA Claims Case No. 97041006 (August 26, 1997).

We agree with the member that attendance at MEB proceedings constitutes official business. However, military authorities determined that MEB proceedings for the member should occur at WRAMC, the place closest to Massachusetts where such proceedings could be held. For personal reasons the member chose instead to schedule proceedings at Tripler. Since travel orders to Hawaii had not been issued when the member traveled, and in fact were never issued, the member cannot be reimbursed. *Cf. Dr. Charles B. Simone, USPHS, B-192916, Nov. 24, 1978.* In that decision a member made a permanent change of station move in anticipation of orders. Even though the orders were eventually issued, the member could not be reimbursed for his move because of the long-standing principle that a member's legal rights and liabilities regarding travel allowances vest when the travel is performed.⁽²⁾

As discussed above, if a member is to be reimbursed for travel, under 1 JFTR ¶ U2100 travel orders must be issued before the travel is performed, and the member's travel must conform to the orders. Furthermore, 1 JFTR ¶ 3120-A

requires that the member purchase his tickets through an approved source (a commercial travel office (CTO) under government contract, an in-house travel office, or a General Services Administration Travel Management Center). If he purchases them through an unapproved source, he cannot be reimbursed unless the order-issuing official certifies that unusual circumstances prevented the use of an approved source. The record contains no such certification. The member argues that the purpose of the regulation is to save the government money on airfares and that he therefore should be reimbursed because his tickets cost the same amount the government would have paid for the tickets through an approved source. We disagree with the member's characterization of the regulation. Under the JFTR as written prior to January 1, 1995, a member was to purchase tickets directly from the airlines or through a CTO under government contract. If he utilized a CTO not under government contract, he could under certain circumstances be reimbursed, but only up to the cost which the government would have incurred. The reimbursement provision was deleted from the JFTR, and we must give effect to the change. *See* DOHA Claims Case No. 97041006, *supra*.

In DOHA's Settlement Certificate the member's claim was also denied on the grounds that part of his travel was in first class. He states that he purchased coach tickets and used frequent flier benefits to upgrade them to business class, as allowed under 1 JFTR ¶ U3125-B5g. He states that Continental does not offer a first class level of service. While Continental's ticket stub states that two of his flights were in business class and two were in first class, we will not dispute that aspect of the member's travel, since his air travel is clearly not reimbursable for the reasons discussed above.

DFAS calls our attention to the fact that the member was erroneously paid \$568 in per diem for trips to WRAMC when he submitted orders for two trips to WRAMC along with receipts for his January 1998 trip to Hawaii. DFAS asks whether the per diem payments may be recouped from the member. As pointed out in the record, 1 JFTR ¶ U2200-A states that a member is entitled to travel allowances only while in a "travel status"--*i.e.*, while performing travel away from his permanent duty station under competent travel orders. The member was not in a travel status when he traveled to Hawaii since he did not travel there under orders, and he did not travel to WRAMC at all. This Office therefore has no objection to DFAS's collection of the \$568 in per diem payments from the member.

Conclusion

We affirm the Settlement Certificate.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board

1. Verbal orders normally are to be confirmed promptly. In *Master Sergeant Paul D. LaMitte, USAF*, B-203623, Mar. 23, 1982, the Comptroller General stated that orders written to confirm verbal orders issued 13 months earlier were not timely.
2. In that decision citations to travel regulations with the prefix "M" are found in volume 1 of the Joint Travel Regulations, predecessors to the JFTR.