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DATE: June 12, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 00021005

CLAIMS APPEALS BOARD DECISION

DIGEST

A member who purchased airline tickets for temporary duty official travel did not purchase the tickets from a travel agency under government contract or other approved facility. Reimbursement of the member is not proper because paragraph U3120 of volume 1 of the Joint Federal Travel Regulations (1 JFTR ¶ U3120) requires that the member purchase tickets from one of the facilities described in 1 JFTR ¶ U3120-A unless under 1 JFTR ¶ U3120-B the order-issuing official authorized or later approved purchase from a non-authorized facility due to unusual circumstances when there was no alternative.

DECISION

The member appeals a decision by the Defense Finance and Accounting Service (DFAS) to deny his claim for reimbursement for airline tickets he purchased for temporary duty travel (TDY). DFAS denied reimbursement because the member procured his transportation from a source other than those provided in paragraph U3120-A of volume 1 of the Joint Federal Travel Regulations (1 JFTR ¶ U3120-A) and no exception applied. [\(U\)](#) The Claims Appeal Board settles this matter for purposes of administrative convenience.

Background

The record indicates that the member was ordered to travel from Ramstein Air Base, Germany, to Scott Air Force Base, Illinois, to perform temporary duty in November 1999. Prior to this, the member had intended to take personal leave from October 31, 1999, to November 6, 1999, in Wichita Falls, Texas, and in September 1999, he had purchased tickets from Lufthansa for \$649.50 for travel during his leave. Item 2h on the back of the member's travel order authorized him to personally procure his own transportation, but no reimbursement was allowed if a foreign-flag carrier was used when a U.S.-flag carrier was available. The member's orders allowed him to take his leave in conjunction with his temporary duty travel. The member seeks reimbursement of \$660 of the \$863.99 he paid for leave ticketing that was expanded to

include his TDY point, but continued to include Frankfurt to Dallas-Fort Worth and return transoceanic legs on Lufthansa. The order-issuing official has not authorized or approved procurement from a non-authorized source on the basis that unusual circumstances existed indicating that the member had no alternative. There is no indication that CTO services were not reasonably available and that arrangements could not have been made through an American carrier or its general agent.

The member states that before he "agreed" to go on TDY, he visited several offices to make sure he did not lose the \$649.50 he invested for his leave, and that his revised arrangements would work properly. He visited the travel agent (non-contract) where he had purchased the tickets for travel during his leave, and that agent agreed to credit him with the \$649.50 and modify his itinerary if he obtained an "upgrade" ticket. The upgrade that the member referred to apparently was an expansion of his original ticketing to cover travel from Wichita Falls, Texas, to Scott Air Force Base and return to Wichita Falls. Next, the member went to his finance and accounting office where the representative advised him that he was able to combine his TDY and leave, but the representative advised him that his reimbursement would be limited to \$660 - - the cost under a government travel request (GTR) for a round trip between Ramstein and Scott Air Force Base. The member states that the representative did not inquire about which airline he intended to use. The member states that he then visited the transportation management office (TMO) to verify his proposed arrangements, and he spoke to a named representative who had helped him before. The representative confirmed that he would be reimbursed up to the GTR cost, and the member states that the representative did not question the service member concerning the airline or the source of the tickets. The member says that he purchased the upgraded ticket only after he completed all of these steps. The member now claims \$660 for the official portion of his travel.

The record also contains an endorsement from an individual who appears to be the member's commanding officer. The commander believes that the member should be reimbursed, but the reasons for reimbursement are that the member was one of the few subject matter experts who was able to attend the meeting at Scott Air Force Base, and that the member was separated from his spouse who is also a service member assigned to a different installation. It is not clear that the commander is the order-issuing official. The commander does not explain any unusual circumstances which required purchase of tickets from a non-authorized facility because the member had no alternative, nor does the commander mention anything about the availability of the CTO or a branch office of an American-flag carrier or its general agent.

Discussion

While the record would require additional development to decide on this basis, it appears that reimbursement should have been denied under the provisions of the so-called "Fly America" Act.⁽²⁾ A U.S. flag air carrier generally must be used when air travel is funded by the U.S. Government. *See* 1 JFTR ¶ U3125-C2. The record does not contain a report concerning the various options that the member had available to him, and copies of all of the ticketing is not included, but we cannot envision that American-flag transoceanic service was unavailable between Frankfurt and Dallas-Fort Worth, using direct or appropriate connections. None of the exceptions in 1 JFTR ¶ U3125-C3 appear to apply, and the member has not provided any non-availability documentation as envisioned in 1 JFTR ¶ U3125-C4. Thus, reimbursement would have been precluded in this situation without regard to the provisions of 1 JFTR ¶ U3120. Item 2h on the back of the member's General Use Travel Order clearly indicated that Fly America pertains to situations where a member can arrange his own transoceanic travel.

The member suggests that he was not advised of either the Fly America restrictions or the requirement that he had to arrange his travel through an authorized facility as specified in 1 JFTR ¶ U3120. For travel claims, we must base our decisions on the law and implementing regulations applicable to the situation at hand--in this case, the relevant portions of the JFTR in effect at the time the member traveled. *See* DOHA Claims Case No. 96123013 (June 2, 1997). *See also*

DOHA Claims Case No. 99101308 (May 5, 2000), a recent decision involving the same JFTR language in paragraph U3120 as controls the present claim. In the context of this regulation, we have held that the fact that the member was not advised to use an approved facility does not provide a basis for payment, since the government is not liable for the erroneous or negligent actions of its officers, agents, or employees. *See, for example*, the discussion in DOHA Claims Case No. 97041009 (July 30, 1997); DOHA Claims Case No. 97030601 (July 30, 1997); DOHA Claims Case No. 97041006 (August 26, 1997); and DOHA Claims Case No. 97031010 (September 16, 1997), all cited in DOHA Claims Case No. 99101308, *supra*. *See also* DOHA Claims Case No. 98051405 (May 20, 1998); and *Petty Officer John R. Blaylock, USN*, 60 Comp. Gen. 257 (1981).

As we explained in DOHA Claims Case No. 99101308, *supra*, the prohibition against disbursements not authorized by statute or regulation is so fundamental that even if an actual government official had specifically misinformed the member that he did not need to use a facility described in 1 JFTR ¶ U3120-A, the member still would not have had the right to reimbursement. The government is neither bound nor estopped by the erroneous or unauthorized acts of its officers, agents, or employees even though committed in the performance of their official duties, and it is a well-settled rule of law that the government is not bound by the erroneous advice of its officers or employees, when such advice contravenes existing regulations. *See* DOHA Claims Case No. 99092806 (February 4, 2000) citing *Joseph Pradarits*, 56 Comp. Gen. 131 (1976), and *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), *reh'g denied* 497 U.S. 1046 (1990).

Aside from an Fly America problem, the service member here did not obtain authorization or approval from the order-issuing official indicating that there were unusual circumstances and that the member had no alternative. Also, there is no indication that a CTO was not reasonably available or that ticketing arrangements could not have been made through a branch office or general agent of an American-flag carrier.

Conclusion

The member's claim is disallowed.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Arthur A. Elkins

Arthur A. Elkins

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. At the time that the member traveled (JFTR updated through Change 155), 1 JFTR ¶ U3120-A1 provided that in arranging official travel, personnel are required to use a commercial travel office under government contract, an in-house travel office, or a General Services Administration Travel anagement Center. But, under 1 JFTR ¶ U3120-B, the order-issuing official may authorize/approve direct purchase from a non-contract travel agent or common carrier when unusual circumstances existed and there was no alternative. In a foreign country, a non-contract travel agent may be used when CTO services were not reasonably available and ticketing arrangements could not have been made through a branch office or general agent of an American-flag carrier. The exceptions in 1 JFTR ¶ U3120-B were prefaced with the following note: "When a non-contract CTO is used, the member must demonstrate that use of a contract CTO was attempted. The last paragraph of 1 JFTR ¶ U3120-B contains the following payment limitation: "Reimbursement for transportation arranged through authorized/approved use of a non-contract travel agent or common carrier . . . is limited to the amount the member would have paid if the arrangements had been made directly through the carrier(s)."
2. The legislation is currently codified at 49 U.S.C. § 40118.