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DATE: September 18, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 00060114

CLAIMS APPEALS BOARD DECISION

DIGEST

Under the Joint Federal Travel Regulations, a member on disciplinary travel is not entitled to per diem for such travel.

DECISION

A service member appeals the April 5, 2000, Settlement Certificate of the Defense Office of Hearing and Appeals (DOHA) in DOHA Claim No. 00030607 which allowed reimbursement for fuel and oil expenses incident to his travel for disciplinary action but disallowed his claim for per diem.

Background

The record indicates that from July 9, 1998, through February 3, 1999, the member was attached to Fort Bragg from his parent unit at Fort Stewart pending completion of a criminal investigation and subsequent court-martial. Fort Bragg did not provide quarters or rations for the member, so he resided with his adult child at a house he owned in the area, decreasing the amount of rent he charged his daughter while he was in the residence. The member was detailed a defense counsel from Fort Stewart, and as a result, he traveled between Fort Stewart and Fort Bragg numerous times to consult with his counsel, for hearings, and for the court-martial. After his acquittal at the court-martial, the member submitted a request for travel expenses, per diem, and rent while attached to Fort Bragg. In an attempt to reimburse the member, Fort Bragg issued travel orders in 1999 concerning the member's travel incident to the proceedings.

The Army and the Defense Finance and Accounting Service (DFAS) determined that the member was entitled to reimbursement for gasoline and oil for travel between Forts Bragg and Stewart, but was not entitled to per diem and

mileage. Our Settlement Certificate affirmed this determination citing paragraph U7450 of Volume 1 of the Joint Federal Travel Regulations (JFTR).

On appeal, the member reiterates his contention that he should receive per diem and full reimbursement for his trips to Fort Stewart. The member contends that if he and his commander at Fort Stewart had been aware of the JFTR provisions, his command would not have allowed him to be attached to Fort Bragg due to the financial burden on him. His request for per diem and full reimbursement is based on the necessity of the Army to provide counsel. Because the trips to Fort Stewart were necessary in order for the member to meet with his counsel, the member believes the Army should reimburse him for his expenses. He comments that he believes his attachment to Fort Bragg placed him at a disadvantage by limiting his access to legal counsel, and therefore he should be reimbursed. Also, because the Army compelled him to maintain two residences for six months, he should receive per diem. Again, the member requests that his claim be forwarded to Congress consistent with the Meritorious Claims Act.

Discussion

Paragraph U7450 of Volume I of the JFTR indicates that a member on disciplinary travel is entitled only to limited reimbursement for travel. Per diem is not payable. If the member travels by privately owned conveyance, he is entitled under the JFTR to reimbursement only for oil and gas. *See* DOHA Claims Case No. 96070227 (November 4, 1996) and B-176654, Apr. 11, 1973. As explained in some depth in our Settlement Certificate, the member's travel in this case between Forts Bragg to Stewart was disciplinary travel,⁽¹⁾ and therefore the member is not entitled to per diem under the JFTR. We appreciate the member's arguments based on equity that he should be fully reimbursed for his expenses, but we are aware of no other provision that would reimburse the member for his lodging, meals, and other incidental living expenses for the period he was attached to Fort Bragg while he occupied a residence he owned prior to his attachment to Fort Bragg. *Compare* B-176654, *supra*, where members were reimbursed for the actual cost of personally procured quarters when government quarters were not available.⁽²⁾

Concerning the request that the member's claim be referred to Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d), the record does not show that the member's claim is unusual or extraordinary. *See* 63 Comp. Gen. 93 (1983) and DOHA Claims Case No. 98120906 (January 29, 1999). The member has been reimbursed according to the JFTR for travel performed in relation to disciplinary action. We do not consider a claim for expenses related to disciplinary travel to be unusual or a nonrecurring problem, and we find no elements of unusual legal liability or equity which would justify our reporting this claim to the Congress under the Meritorious Claims Act.

Conclusion

We affirm the Settlement.

_____/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. After reviewing the file, we agree with the determination in the Settlement Certificate that the member's attachment to Fort Bragg was primarily for disciplinary purposes and the military work he performed there was incidental. *Compare* DOHA Claims Case No. 96070227, *supra*, where a member did not receive per diem after it was found that his travel order to a temporary duty station contemplated his attendance at his disciplinary action, not full-time work; and *Captain Raymond F. Heath, USAF*, B-256663, Nov. 9, 1994, where a member traveled to his temporary duty station before any investigation of allegations against him had begun. Payment of per diem for meals and incidental expenses was proper for periods during which the member performed military duties away from his permanent duty station, but not proper for days in which he attended his court-martial.

2. The JFTR specify under what circumstances a member on TDY will be reimbursed for lodging and meal expenses which result from that travel. When a member incurs costs by occupying commercial lodging, the regulations state which expenses are reimbursable. The regulations do not provide for reimbursement where the member, as in the present case, occupied a residence he owned prior to his TDY and thus did not incur lodging expenses as a result of the TDY.