

April 15, 2003

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In Re:

[Redacted]

Claimant

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Claims Case No. 03040701

## **CLAIMS APPEALS BOARD DECISION**

### **DIGEST**

Where a member erroneously receives a travel advance for a temporary additional duty assignment which is actually in the same local area as his permanent duty station, he may obtain waiver under 10 U.S.C. § 2774 for amounts which he expends in detrimental reliance on the erroneous authorization, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. In such cases, the burden is upon the member to provide documentary evidence to substantiate actual, legitimate expenditures made pursuant to the erroneous authorization.

### **DECISION**

This decision responds to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 02103101, dated November 25, 2002, which waived in part (\$3,886.60) and denied waiver in part (\$2,513.40), a United States Coast Guard member's application for waiver of an erroneous travel advance in the amount of \$6,400.00.

### **Background**

On April 5, 2001, the member, a United States Coast Guard officer, received permanent change of station (PCS) orders transferring him from the Coast Guard National Drug Intelligence Center (NDIC), Johnstown, PA, to the Coast Guard Cutter CAMPBELL (CGC CAMPBELL), whose home port was New Bedford, MA. Those orders authorized him to perform two temporary additional duty (TAD) assignments. The first TAD was located at the Coast Guard Academy, New London, CT, from April 16, 2001, through, April 28, 2001, and the second TAD was at the United States Naval

Station, Newport, RI, from April 30, 2001, through July 3, 2001.

The member departed from the NDIC on April 12, 2001, and reported to the CGC CAMPBELL on April 15, 2001. He performed the first TAD at the Coast Guard Academy from April 16, 2001, through April 28, 2001. Because the Coast Guard Academy officials were not aware of the fact that the member had already reported to his new permanent duty station in New Bedford, MA, the member was erroneously authorized per diem in connection with his second TAD.<sup>(1)</sup> As a result, he received a travel advance for this second TAD, in the amount of \$6,400.00. Only later was it determined that the member was not entitled to receive per diem for his second TAD because it was in the same local area as his permanent duty station. Accordingly, he became indebted to the United States in the amount of \$6,400.00.

In their administrative report, dated October 28, 2002, the Coast Guard recommended denial of waiver with respect to the entire \$6,400.00 debt. In Settlement Certificate, DOHA Claim No. 02103101, dated November 25, 2002, our office waived \$3,886.60 of the overpayment, which corresponded to the member's documented payments for lodging and related telephone charges. Waiver of that amount was granted because 1) the CGC CAMPBELL was not stationed at its home port during the period May 11, 2001, through June 17, 2001, and 2) the member's commanding officer stated that given the rigorous and classified nature of the Tactical Action Officer course, travel between Newport and New Bedford on a daily basis would not have been reasonable, in that the course required long hours of study which could only have been accomplished in the classroom for security reasons, making on-base or nearby lodging necessary. However, waiver was denied with respect to the remaining \$2,513.40, because no documentary evidence was submitted to establish that the overpayment was used for its intended purpose. On appeal, the member seeks waiver of that additional \$2,513.40 overpayment arguing that he expended that sum for "day-to-day expenses" associated with the TAD assignment, such as "food, gas, dry cleaning, [and] laundry," for which he was not required to keep receipts.

### **Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive collection of erroneous payments of travel expenses to a member if collection would be against equity and good conscience and not in the best interest of the United States. Waiver is not appropriate if there is any indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. *See Standards for Waiver*, 4 C.F.R. § 91.5(b) (1996).

A travel advance payment is considered merely a loan to the member, to be used for authorized expenses in accordance with his travel order. It is not meant to represent a final determination of the amount to which a member is entitled and members who receive such advance travel funds are on notice that they are entitled to be reimbursed only for legally authorized expenditures. A travel advance is only considered to be erroneous and subject to waiver to the extent it was made to cover expenses erroneously authorized and the member actually spent the advance in reliance on the erroneous authorization. As a general rule, it is presumed that expenses incurred in accordance with an erroneous authorization were made in reliance on that authorization. However, under certain circumstances it is inappropriate to assume such detrimental reliance--particularly where it appears that the expenditure would have been made anyway, absent the erroneous authorization. *See 67 Comp. Gen. 496 (1988)*. Further, in cases such as this, it is incumbent upon the member to establish with specificity, by appropriate documentary evidence, the amount and nature of each expenditure. If it cannot be shown the member expended additional funds in reliance on an erroneous authorization, then waiver is not appropriate. *See B-271190, July 17, 1996*.

In this case, waiver of the \$3,886.60 of the \$6,400.00 overpayment was appropriate. The \$3,886.60 expenditure was substantiated by documentary evidence in the form of an itemized hotel bill/receipt. The amount represented the member's actual expenditure for lodging and related telephone charges in Newport, RI, which he made in detrimental reliance on the erroneous travel order. But for the erroneous authorization, he would have commuted to the TAD assignment, and would not have incurred and paid that expense.

Likewise, the denial of waiver with respect to the remaining \$2,513.40 of the \$6,400.00 overpayment was also appropriate. The \$2,513.40 claimed expenditure was not substantiated by documentary evidence. *See B-271190, July 17, 1996*.

Finally, while financial hardship does not provide a basis for waiver, the Coast Guard, at its own discretion, may arrange a repayment plan which takes any hardship appropriately into account. *See* DOHA Claims Case No. 02111801 (December 2, 2002).

### Conclusion

We affirm the Settlement Certificate.

\_\_\_\_\_/s/  
Michael D. Hipple  
Chairman, Claims Appeals Board

\_\_\_\_\_/s/  
William S. Fields  
Member, Claims Appeals Board

\_\_\_\_\_/s/  
Jean E. Smallin  
Member, Claims Appeals Board

1. Usually, a member is not entitled to per diem for travel or temporary duty performed within the limits of the permanent duty station. *See* volume 1 of the *Joint Federal Travel Regulations* ¶ U4102.