February 18, 2004

In Re:

[Redacted]

Claimant

Claims Case No. 04020503

CLAIMS APPEALS BOARD DECISION

DIGEST

A member is not entitled to reimbursement for lodging and related expenses incident to a temporary duty tour, where the house he leases is owned by him and/or his wife.

DECISION

This decision responds to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 03053007, dated August 6, 2003, which denied an Air National Guard member's claim for reimbursement for the rental of a house, furniture rental, and utility expenses incident to a temporary duty (TDY) tour in 2002.

Background

The record shows that the claimant was a member of the Air National Guard (ANG), a reserve component of the United States Air Force, assigned to a unit in Burlington, Vermont. He was married, and he and his wife's permanent residence was at that same location. By special orders, he was directed to perform TDY from May 2002, through August 2002 at an ANG base in Arizona.

In June 2002, the member signed a lease for the rental of a house in Tucson, Arizona. The leased house was jointly owned by the member and his wife. The lease named his wife as the property's landlord and gave her address as Enid, Oklahoma. All utility services were to be paid by the tenant. No rental receipts are in the record. At the time the lease

was executed, the property was being managed by a property management company, pursuant to a agreement signed by the member's wife in May 2001. On that agreement, the wife gave her address as the couple's permanent residence in Burlington, Vermont.

Prior to signing the lease, the member signed an agreement for the lease of 20 pieces of furniture, appliances, and other items from a company in Tucson, Arizona. The items were to be delivered to the leased property just prior to the beginning of the lease term.

The member traveled from Burlington to Tucson in May 2002. In the following weeks and months, he received and paid bills for the following utility services: electricity, water and sewer, trash removal, and telephone. The water and sewer bills were issued in his wife's name. The other bills were issued in his name.

In July 2002, the member submitted a voucher for the period of May 12-July 31, 2002, in which he claimed $4,647.36 for "contract quarters." Item 18d on the voucher showed that $4,698 was allowed. However, worksheets in the file showed that it was reviewed twice and that both times $4,237.00 in per diem was allowed for payment--none of it for lodging.

The member departed Tucson in August 2002, and traveled home arriving in Burlington in September 2002. In September 2002, he submitted a voucher for the period of August 1-September 12, 2002. That voucher included a claim for $1,714.34 for "contract quarters." Item 18d showed that $1,798 was allowed, but the file on that claim does not include any review worksheet for that voucher showing what was actually allowed and paid.

Upon review, the member's claim for reimbursement for lodging was denied on the grounds that he had essentially lodged in his own house. Also, the Defense Finance & Accounting Service (DFAS) noted that the various periods covered by the utility bills did not coincide with the starting and ending dates of his TDY, and that there was no evidence of refunds or prorations to match the dates. DFAS further noted that there were no rental receipts in the record.

When the member submitted the claim to our Office, it was likewise disallowed because: 1) the rented house was owned by the member and/or his wife, and reimbursement in such circumstances was prohibited under Volume 1, Joint Federal Travel Regulations (JFTR), paragraphs U4125-A1d, and U4100; 2) the member provided no rental receipts as required by 1 JFTR ¶ U2510-A; and 3) the furniture rental and utility expenses were the type of expenses that the member would have paid when occupying the house for any reason, regardless of whether the occupation was incidental to a TDY tour. The member now appeals that determination to the Board.

As part of his appeal, the member references various errors in the Settlement Certificate concerning dates of orders or periods of duty which impact the amount of the claim. However, because those errors are not material to the legal issues raised on appeal, we will not consider them at this time.

In his appeal, the member also now claims to have been underpaid $70.91 for a rental car and $10 for rental car fuel. In its response, DFAS agrees that the member is owed $10 for his fuel expenses, but states that he was overpaid $226.48 for his rental car, resulting in a net debt of $216.48. DFAS also states that the member is due an additional $17 incident to his outbound trip, but was overpaid $108.66 for the unnecessary or unauthorized shipping of items back to Vermont. That resulted in an additional net debt of $91.66. Because these items were raised for the first time in the appeal, we will not consider them. They should instead be resolved in accordance with the claims process.

Discussion

Volume 1, Joint Federal Travel Regulations (JFTR), ¶ U4125-A1d, states:[(1)] "If a member stays with friends or relatives while on TDY, no cost for lodging is allowed, whether or not any payment of lodging is made to the friend or relative." In his appeal, the member argues that the property in question was "commercial rental property" and that if he is not paid, the government will "reap the benefit of unjust enrichment." He also argues that this provision should not bar him from receiving reimbursement because he did not "stay" with his wife--she was a service member on TDY in Oklahoma at the time. Upon review, we think the adjudicator's decision in this case was correct.

Under the above rule, a member is not entitled to reimbursement for lodging expenses when he stays with a friend or relative while on TDY, even though he may have paid rent. *See* 60 Comp. Gen. 57 (1980). The purpose of the prohibition "is to eliminate potential abuses from occurring in connection with claims involving lodging with friends and relatives." *Id.* The fact that the government may reap a financial benefit as a result of such an arrangement does not negate the rule. *See* B-208129, Nov. 10, 1982.

In B-199683, Feb. 24, 1982, the Comptroller General allowed for the reimbursement of such lodging expenses where a member's wife and children occupied a separate apartment owned by a relative--rather than actually staying with the relative--but only under certain exigent circumstances, none of which are present here. In that case, the wife and children had been forced to make an emergency evacuation from a foreign country to a small community (American Fork, Utah) designated as a safe haven. The record showed that the wife had repeatedly tried to obtain a commercial apartment in the community, but had been unable to due so because of lack of availability. The relative that agreed to lease the apartment was the wife's husband's uncle and the Comptroller General specifically noted that "the lack of close ties with the particular relative involved serve to distinguish th[e] case from the usual case of staying with friends or relatives." *Id.*

In the present case, the particular relative involved has very close ties with the member--it's his wife. The member's move to Tucson did not present the exigencies attributable to a forced evacuation from a foreign country and the record contains no evidence that the member searched for but was unable to obtain commercial housing in that community because of lack of availability.

As DFAS noted in their report, the property in question would not be considered commercial rental property by the Internal Revenue Service.[(2)] Rather, it would have been considered one of the member's homes. The Comptroller General has previously stated that the purpose of regulations such as the one in question is to reimburse the member for the more than normal expenses to which he is put in obtaining quarters and subsistence while in such transient status. *See* 44 Comp. Gen. 740 (1965). In this case, the rent was not a payment to a party other than the member or his wife, so there really was no rental expense to reimburse. Although the various utility expenses were items that the member's tenants would have paid for while occupying the house, they were typical household expenses that the member or his wife would have paid when they were occupying the house for any reason, regardless of whether or not such occupation was incident to a TDY tour. The same is true with respect to the furniture rental. Therefore, it was reasonable for the adjudicator to conclude that the expenses at issue were not due exclusively to the member's TDY and were thus not reimbursable.

Finally, in order to obtain reimbursement, the member must, in accordance with 1 JFTR ¶ U2510-A, submit receipts for "lodging expenses regardless of amount," and "expenditures of $75 or more." A receipted bill or other form of receipt "must show when specific services were rendered or articles purchased, and the unit price." *Id.* In this case, the member submitted no receipts for his lodging because he has not yet paid the landlord. Therefore, reimbursement for lodging would not have been valid since there has not yet been an expenditure.[(3)]

Conclusion

We affirm the Settlement Certificate.

______/s/________________________
ichael D. Hipple
Chairman, Claims Appeals Board

______/s/________________________
William S. Fields
ember, Claims Appeals Board

______/s/________________________
Jean E. Smallin
ember, Claims Appeals Board

1. All 1 JFTR citations refer to the version current through Change 185, ay 1, 2002. These were not amended through Change 188, August 1, 2002.

2. *See* "Topic 415--Renting Vacation Property and Renting to Relative," *The Digital Daily,* Internal Revenue Service, April 2, 2003. (A person is considered to use a dwelling unit as a home if they use it for personal purposes during a tax year for more than the greater of :14 days or 10% of the total days it is rented to others at a fair rental price.)

3. In his appeal, the member states that the lack of receipts is due to the fact that the landlord--his wife--is "understanding of the military" and "the financial hardship that [the] denial of payment has put [him] in," and has "agreed to allow [him] to pay when [he is] paid." The fact that the landlord is not seeking immediate payment is a further indication that the arrangement in question was not an arms-length, commercial transaction.