

February 27, 2004

In Re:

[Redacted]

Claimant

Claims Case No. 04021301

CLAIMS APPEALS BOARD DECISION

DIGEST

A travel advance is only considered to be erroneous and subject to waiver under 10 U.S.C. § 2774 to the extent it is made to cover expenses erroneously authorized and the member actually spends the advance in reliance on the erroneous authorization. When the record shows that neither the travel orders nor the advances made pursuant to those orders were erroneous, consideration for waiver is not appropriate.

DECISION

This decision responds to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 03061305, dated October 14, 2003, which determined that a United States Air Force member's application for waiver of a debt in the amount of \$6,223.05 resulting from a travel advance could not be considered for waiver.

Background

The record shows that the member is an Air Force reservist residing in the Raleigh-Durham, North Carolina area. In September 2001, he was issued special orders authorizing him to perform active duty at Seymour Johnson Air Force Base, North Carolina. That base was located approximately 67 miles from his home. In the orders, the member was directed to obtain government or contract quarters, or obtain a certificate of nonavailability. The orders indicated that government meals were not available and that he was entitled to *per diem* for meals. Based on his orders, he therefore received travel advances of \$28 a day *per diem*, totaling \$15,501.26. In response to an inquiry, the member was given erroneous verbal advice that he would be allowed to keep the *per diem* payments regardless of whether he drove to the base from his home every day, or stayed near the base in government-paid quarters.

The record further shows that when the member submitted his travel voucher for settlement, travel officials discovered that he had driven from his home to his duty station each day, instead of obtaining quarters near his base. As a result, the

Defense Finance and Accounting Service (DFAS) determined that the member's authorized expenses were only \$9,278.21. Because the member received travel advances in the amount of \$15,501.26, he became indebted to the United States in the amount of \$6,223.05, which is the amount at issue here.

In the Settlement Certificate, our Office determined that the member's debt of \$6,223.05 could not be considered for waiver because the claim did not arise from an "erroneous payment" within the scope of the waiver statute. In that decision, the adjudicator noted that the member's travel orders authorized *per diem*. Therefore, if he had obtained quarters within the vicinity of his base, he would have been entitled to *per diem* for his meals. However, he elected to drive every day and stated that he brought his own lunches from home.

The member appeals our Office's Settlement Certificate, but his basis for appeal now asserts a new issue--that he is entitled to \$3,295.50 for the purchase of gas used during his commute. The member arrived at the \$3,295.50 figure based upon his estimate that he made 164 round trips of approximately 134 miles each. He submits no receipts or documents showing actual expenditures for gas. In their administrative report, DFAS notes that they had asked the member for an estimate of his gas expenditures prior to their adjudication of his claim, and the member had responded that he did not know the amount he had spent because he did not keep records. DFAS also notes that in his original submission, the member had claimed only 109 round trips and in a subsequent submission claimed approximately 90 round trips. Finally, DFAS notes that when the number of trips claimed by the member is multiplied by the distance of the trips and the price of gas, it produces a figure significantly lower than the amount claimed by the member.

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 as merely a loan to the member, to be used for authorized expenses in accordance with his travel orders. 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 DOHA Claims Case No. 03040701* (April 15, 2003) citing 67 Comp. Gen. 496 (1988). Further, 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 Id.* citing B-271190, July 17, 1996.

In this case, the determination that the \$6,223.05 debt for travel advances could not be considered for waiver was correct because there was no showing that the travel orders were erroneous or that the payments were erroneous when made. *See B-244508*, Nov. 26, 1991. Additionally, the government is neither bound nor estopped by the erroneous advice or unauthorized acts of its officers, agents or employees, even though committed in the performance of their official duties. *See DOHA Claims Case No. 03061247* (June 17, 2003). Moreover, since the member's written orders were clear, he should not have deviated from them on the basis of verbal advice.

When the member chose to drive to and from work on a daily basis, rather than avail himself of the lodging as provided for in his orders, his status became that of a commuter. Even so, DFAS gave the member an opportunity to substantiate his claimed expenditures for gas. He did not take advantage of the opportunity at that time, stating that he could not do so. Consideration of that claim at this juncture is not appropriate. [\(U\)](#)

Finally, in his submissions the member stated the advance in question had "already been spent trying to keep his family's lifestyle somewhat near what it was before [he] was called to serve." Hardship does not provide a basis for waiver. *See* DOHA Claims Case No. 03100612 (December 3, 2003). However, in cases of hardship, DFAS has the authority, at its own discretion, to reduce the size of the installments it collects from a debtor, *i.e.*, to extend the payment period. DFAS may also suspend or terminate collection when it deems it appropriate. *See* DOHA Claims Case No. 04022401 (February 25, 2004).

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. Even if it were appropriate, the \$3,295.50 expenditure which the member claims is not substantiated by documentary evidence. *See* DOHA Claims Case No. 03040701, *supra* citing

B-271190, *supra*. Further, it does not appear to be a reasonable estimate based upon the circumstances of the case. *See* DOHA Claims Case No. 03092220 (September 30, 2003).