

DATE: May 6, 2004

In Re:

[REDACTED]

Claimant

Claims Case No. 04042602

CLAIMS APPEALS BOARD DECISION

DIGEST

A service member is not entitled to per diem allowances when he is ordered to annual training away from home and the government provides quarters and mess.

DECISION

A Reserve member of the United States Air Force appeals the November 12, 2003, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 03092217 in which DOHA affirmed the decision of the Defense Finance and Accounting Service (DFAS) and the Air Force Reserve Command to deny full per diem to the member while on annual training away from his permanent duty station.

Background

The record shows that the member is an Individual Mobilization Augmentee (Category B Reserve) attached to an Air Force agency in northern Virginia. The member also resides in the same area. By orders dated April 1, 2003, the member was directed to perform his annual tour (annual training) at an installation in California for 12 days plus authorized travel starting May 26, 2003. The order also stated that all government meals are available and directed, and that the member will pay lodging costs and the standard meal rate at the government mess. The member traveled to his annual training site on May 26, 2003, and checked into an on-base temporary lodging facility. He checked out on June 6, 2003 and returned to his home of record. When the member checked out of lodging, he paid \$266.50. The member filed a travel voucher dated June 10, 2003, in which he claimed \$264 for billeting. The member was paid the \$264 claimed for billeting, but not any amount for the meals and incidental expenses (MI&E) portion of the per diem except for \$22.50 for the travel days of May 26th and June 6th.

The member claims full per diem entitlement for each day of annual training. The Air Force Reserve denied per diem in accordance with Volume 1 of the Joint Federal Travel Regulations, para. U7150-A1c(1) (1 JFTR ¶ U7150-A1c(1)), which prohibits payment of per diem to Reservists on active duty during annual training when government quarters (other than temporary lodging facilities) and government mess are available, as they were here, and the member, as here, is expected to return to his place of entry onto active duty at the conclusion of the tour.

The member contends that the cited provision in ¶ U7150 should be applied only when the member performs duty at his permanent duty station (PDS). The member argues that this provision was intended to prevent payment of per diem when an annual tour is performed at the member's permanent duty station because the purpose of per diem is to offset the cost of MI&E while on travel and/or temporary duty away from the member's PDS. The member cites 1 JFTR ¶ U4100 for the basic purpose of per diem and notes that this is consistent with 1 JFTR

¶ U4102-D which generally prohibits payment of per diem for travel or temporary duty within the limits of the PDS. The member also argues that the drafters of the JFTR simply assumed that all annual tours take place at the member's PDS, and that a mechanical, "plain meaning" application of ¶ U7150 without considering its purpose violates the Supreme Court's decisions on interpretation of statutes. In the member's view, an interpretation of ¶ U7150 to deny per diem on all annual tours regardless of whether or not they take place at the PDS is unreasonable and is plainly at variance with the policy in ¶ U4100 of providing per diem to offset the cost of MI&E while performing travel and/or TDY away from the PDS.

Discussion

Our Office must render decisions based on applicable statutes, regulations and prior administrative decisions. The JFTR is the implementing regulation for travel entitlements under title 37, United States Code, Chapter 7, and as such, it has the force and effect of law. We cannot allow a claim at variance with the JFTR. *See* DOHA Claims Case No. 99122105 (March 21, 2000), *aff'd* Deputy General Counsel (Fiscal), December 21, 2001.

The interpretation of ¶ U7150 by DFAS, the Air Force Reserve Command and our adjudicators, and the application of this provision to the claimant in this situation, reflects a well-established interpretation of the underlying statutory entitlement found at 37 U.S.C. § 404. The Comptroller General found that Congress did not intend Reservists on annual training to receive per diem when government lodging and mess are available. *See* 48 Comp. Gen. 517, 521-522 (1969). Additionally, it makes no difference whether the duty is described as annual training or active duty for training so long as the Reservist is away from home and the government provides lodging and mess. *See* the Comptroller General's Decision B-203925, Sept. 2, 1981. In this regard, Reserve members are treated in a manner similar to their active duty counterparts who are not entitled to per diem in those instances where the government provides quarters and mess. *See* 48 Comp. Gen., *supra*, at 522-523. While the Congress has amended Chapter 7 of title 37 many times since the Comptroller General's 1969 decision, it has not amended the law to contradict the Comptroller General's 1969 interpretation.

Conclusion

We affirm the Settlement Certificate.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: William S. Fields

William S. Fields
Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board