

DATE: September 30, 2004

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In Re:

[REDACTED]

Claimant

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Claims Case No. 04092201

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A member who appeals an unfavorable waiver determination must provide a rationale for reversing the prior determination and applying the outcome advocated by the member.

### DECISION

A member of the Army Reserve appeals the August 31, 2004, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Case No. 04080503, in which DOHA waived \$3,939.56 of \$10,069.16 that was erroneously overpaid to the member. The member seeks waiver of an additional \$277.58.

### Background

The record shows that on March 15, 2003, the member was ordered to active duty for 365 days to participate in Operation Enduring Freedom. The member received travel advances during the period June 6, 2003, through November 7, 2003, totaling \$10,297.63 for per diem, but the Defense Finance and Accounting Service (DFAS) later determined that he was within commuting distance of his duty assignment; therefore, he was not entitled to per diem. His authorized expenses were only \$228.47.

When a member receives an erroneous travel advance, DOHA may consider waiver for amounts the member expends in detrimental reliance on the erroneous authorization, provided there is no indication of fraud, fault, misrepresentation or the lack of good faith on the part of the member. The burden is on the member to substantiate actual expenditures made pursuant to the erroneous authorization. When, as here, non-commercial accommodations are secured from friends or relatives, the member must provide written evidence that the friends or relatives incurred additional expenses while the member was residing with them. Here, the member had estimated that he spent \$1,500 for the purchase of food for the

place he stayed while on active duty, the residence of his in-laws. But DOHA credited him only with the value of the Basic Allowance for Subsistence (BAS) that the member should receive when no *per diem* is payable and indicated that the member did not substantiate the amounts payable to his in-laws.

The totality of the member's appeal is: "I would like you to reconsider the difference between the \$1,500.00 I claimed and the amount of BAS received 1222.42= \$277.58." We construe the member's appeal to be that DOHA should have waived the \$1,500 he estimated as expenditures for food at his in-laws. *See, e.g.*, DOHA Claims Case No. 03040701 (April 15, 2003).

### Discussion

The member's appeal does not suggest any rationale as to why DOHA's decision is incorrect or not reasonably supported by the record, and why the result advocated by the member should apply. We are not permitted to guess at what such a rationale could be. *Compare* DOHA Claims Case No. 04082451 (August 31, 2004) *citing* DOHA Claims Case No. 04042701 (April 28, 2004), *aff'd* Deputy General Counsel (Fiscal) July 6, 2004.

### Conclusion

The Settlement Certificate is affirmed.

Signed: Michael D. Hipple

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Michael D. Hipple  
Chairman, Claims Appeals Board

Signed: William S. Fields

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William S. Fields  
Member, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin  
Member, Claims Appeals Board