

DATE: May 9, 2005

In Re:

[Redacted]

Claimant

Claims Case No. 05042503

CLAIMS APPEALS BOARD DECISION

DIGEST

A member who was authorized to stay in off-post housing while on temporary duty travel (TDY) was charged a processing fee and an administrative fee by the apartment complex where he stayed. He may not be reimbursed for such fees since there is no authority in statute or regulation which would allow reimbursement.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement, DOHA Claims No. 03092401, dated December 18, 2003.

Background

The member seeks reimbursement of \$240 for a processing fee (\$40) and an administrative fee (\$200) incident to his temporary duty (TDY) at Fort Bragg, North Carolina, in 2003. The member received orders dated March 28, 2003, directing him to perform active duty for training on TDY at Fort Bragg, North Carolina, from April 1, 2003, through June 24, 2003. His orders directed him to use government quarters and mess unless quarters were not available. The member was issued a statement of non-availability by the on-post housing authority. Subsequently, he entered into a lease agreement to stay in off-post housing at an apartment complex. At the time he filled out his rental application, he paid two fees. The first fee was a processing fee in the amount of \$40, described in the rental application as a non-refundable fee for the owner's cost of processing the application. The other was an administrative fee in the amount of \$200, described as a non-refundable administrative fee in consideration of the owner taking the apartment off the market while considering the approval of the application.

The member's claim for reimbursement for the two fees on his travel voucher was subsequently denied. He appealed his claim on the basis that he was compelled to find off-post housing due to lack of on-post housing, that the apartment complex where he stayed was recommended by on-post housing personnel, and that he saved the Government money because it was less expensive than a hotel room.

Our Settlement Certificate denied the member's request for reimbursement of the two fees on the basis that there was no provision in the applicable regulations, the Joint Federal Travel Regulations (JFTR), that would allow payment. The member appeals the denial of his claim and reiterates the same issues he raised previously. There are no factual issues in dispute.

Discussion

Where there is no provision in the statute or regulations for reimbursement, we cannot allow payment. *See* DOHA Claims Case No. 99122105 (March 21, 2000), *aff'd* Deputy General Counsel (Fiscal), December 21, 2001. In the Settlement Certificate, the adjudicator discussed the precise application of portions of the JFTR to the member's claim. Specifically, since the fees were charged separately from the member's monthly rent, the adjudicator properly considered them under paragraph U4520 of Volume 1 of the JFTR, as miscellaneous expenses, and found no provision that would allow reimbursement. We find no error in the Settlement Certificate.

Even if we assume solely for the purposes of this appeal that Army representatives may have incorrectly referred the member to the apartment complex involved, this fact would not provide a basis for payment of his claim. The government is not liable for erroneous information given by its officers, agents, or employees. *See* DOHA Claims Case No. 00021004 (June 12, 2000).

Finally, we note that on May 12, 2004, a new claims instruction, DoD Instruction 1340.21 (codified in title 32 of the Code of Federal Regulations (CFR), Part 282) was implemented. Under the new instruction, the member has no further right of review, and this is the final decision of the Department of Defense in this matter. No further action is required by the Defense Finance and Accounting Service (DFAS).

Conclusion

We affirm the Settlement.

Michael D. Hipple
Chairman, Claims Appeals Board

Jean E. Smallin
Member, Claims Appeals Board

Catherine M. Engstrom
Member, Claims Appeals Board