

KEYWORDS: Travel claim; JFTR

DIGEST: Under paragraph U7150 of volume 1 of the Joint Federal Travel Regulations (JFTR), a reservist on active duty, whose home and place of active duty are within a reasonable commuting distance of each other as determined by the order-issuing official/installation commander, is not entitled to per diem allowance. Areas within a reasonable commuting distance of each other are considered areas within a local commuting area of the duty station, as defined under paragraph U3500-B, the boundaries of which are determined by the order-issuing official or as prescribed by local Service directives. An Air Force Reservist's claim for per diem for her periods of active duty at her unit's home station is denied since her home was located within the local commuting area of her duty station, as prescribed by local instruction.

CASENO: 06010605

DATE: 1/31/2006

January 31, 2006

In Re:

[Redacted]

Claimant

Claims Case No. 06010605

CLAIMS APPEALS BOARD
RECONSIDERATION DECISION

DIGEST

Under paragraph U7150 of volume 1 of the Joint Federal Travel Regulations (JFTR), a reservist on active duty, whose

home and place of active duty are within a reasonable commuting distance of each other as determined by the order-issuing official/installation commander, is not entitled to per diem allowance. Areas within a reasonable commuting distance of each other are considered areas within a local commuting area of the duty station, as defined under paragraph U3500-B, the boundaries of which are determined by the order-issuing official or as prescribed by local Service directives. An Air Force Reservist's claim for per diem for her periods of active duty at her unit's home station is denied since her home was located within the local commuting area of her duty station, as prescribed by local instruction.

DECISION

This responds to a request for reconsideration of Defense Office of Hearings and Appeals (DOHA) Appeal Decision, DOHA Claim No. 05091910 (December 7, 2005), in which we denied an Air Force Reservist's claim for per diem and transportation allowances for her active duty tours from August 1, 1998, onward.

Background

The member is a staff sergeant in the United States Air Force Reserve and resides in McDonough, Georgia. She is assigned to the 94th Airlift Wing (94 AW), Dobbins Air Reserve Base, Georgia. Prior to August 1, 1998, she was paid per diem for her periods of active duty at Dobbins because she lived more than 50 miles and more than one hour of driving time from the base. On August 1, 1998, AW Instruction 65-101, Administrative Orders and Travel Entitlements, was issued, and the member was notified that she was no longer entitled to per diem when she performed active duty at Dobbins. [\(1\)](#)

The member subsequently pursued a claim for per diem for her periods of active duty from August 1, 1998, to present. The Appeal Decision allowed the member her actual expenses allowance (AEA) and reimbursement for one round trip for each active duty period, and disallowed the remainder of her claim. The member is now requesting reconsideration of that decision. In her request for reconsideration, she states that she was "inadvertently" removed from a "non-commute" status as of August 1, 1998, because of the change in the 94th Airlift Wing (94 AW) Instruction. However, she states that even with the mileage change she should have continued to receive per diem based on the fact that her commute is over one hour. In addition, she cites 10 U.S.C. § 1034, [\(2\)](#) stating that the matter is currently being addressed under that statute.

Discussion

The governing regulation is paragraph U7150 of volume 1 of the Joint Federal Travel Regulations (JFTR), which provides authority for the payment of travel and transportation allowances for reservists. The member performed active duty for her reserve component at her unit of assignment, Dobbins Air Reserve Base, Georgia. Paragraph U7150-A1b states that there is no travel and/or transportation allowance entitlement for travel between home and the place of active duty when the order-issuing official or installation commander determines that both are within a reasonable commuting distance of each other and that the nature of the duty involved permits commuting. Areas within a reasonable commuting distance are described under paragraph U3500-B. Under U3500-B, a local area is defined as the area within a local commuting area of the duty station, the boundaries of which are determined by the order-issuing official or as prescribed by local Service directives. As prescribed by AW 65-101, the member's home zip code 30252 was in the Dobbins commuting area, and therefore the member was not entitled to per diem. In the Appeal Decision, the adjudicator found that the commuting area definition used in the instruction was not based on an arbitrary mileage radius. We find no error in this analysis and conclusion. *See* 59 Comp. Gen. 397 (1980).

As for the member pursuing action under 10 U.S.C. § 1034, the statute directs the member to submit allegations of prohibited personnel actions to the Inspector General. Our Office is limited to rendering decisions based on the applicable statutes and regulations (the JFTR) and prior administrative decisions, and we cannot allow a claim at variance with the JFTR. *See* DOHA Claims Case No. 99122105 (March 21, 2000).

Conclusion

For the reasons stated, the Appeal Decision is sustained. In accordance with 32 C.F.R. Part 282, Appendix E, paragraph o(2), this is the final Department of Defense administrative action in this matter.

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

William S. Fields

Member, Claims Appeals Board

_____/s/_____

Catherine M. Engstrom

Member, Claims Appeals Board

1. Paragraph 13 of AW 65-101 provided the following: "The zip codes defining the commuting area for Dobbins ARB, GA are contained in Attachment 2. The commuting area is defined by USPS Zip Codes to include all areas within one hour driving time and 55 miles distance from Dobbins ARB. Driving time has been determined by utilization of the Rand McNally Mile Maker software program. This is an accepted standard within the DoD Travel Community. As zip code areas grow, the US Postal Service may subdivide a zip code, which would result in a new postal zip code. If the newly added zip code was located in a zip code identified in this Instruction as being within the commuting area, then the new zip code is considered to be within the commuting area of Dobbins ARB, GA. Per diem is not payable within the commuting area defined. Travel allowance is payable at the rate in effect at the time the travel is performed."

2. This statute prohibits reprisal against a member for communicating with members of Congress or the Inspector General.