

DATE: January 24, 2007

In Re:

REDACTED

Claimant

)
Claims Case No. 07011710

CLAIMS APPEALS BOARD DECISION

DIGEST

When a member is ordered to temporary duty travel, and it is later determined that such order was improper, erroneous payments paid thereafter can be waived only to the extent the money was spent for its intended purpose.

DECISION

A member of the United States Air Force requests that we reconsider the September 22, 2006, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 06092001. The member is indebted to the government in the amount of \$12,824.00 for the overpayment of *per diem*, and in the Settlement Certificate our adjudicators waived \$5,002.86 of the government's claim against her, but denied waiver of the remaining \$7,821.14 of the indebtedness. The member requests that we also waive the remaining indebtedness.

Background

The record shows that the member received orders to perform temporary duty travel (TDY) at a location in California, and in connection with the TDY, she received advance *per diem* payments totaling \$14,061.00. It was later determined that the member was not entitled to receive *per diem* because she lived within the commuting distance of her TDY location. Since the member was entitled to \$1,237.00 in connection with the TDY, the amount of her debt was \$12,824.00. In considering her request for waiver of this debt, our Office gave the member credit for meals and groceries supported by receipts (\$7,941.79), minus basic allowance for subsistence (BAS) received during that period (\$2,938.93), or \$5,002.86. The member did not provide documentary evidence showing that she actually expended the remaining portion of the advanced *per diem* payments in connection with her TDY; therefore, our adjudicators concluded that collection of the balance of the advance would not be against equity and good conscience.

In her request for reconsideration, the member claims entitlement to the entire amount advanced as a matter of legal right "based primarily on the fact that we did in fact live outside the commute area . . ."

Discussion

The member requests relief under title 10, United States Code, Section 2774 (10 U.S.C.

§ 2774). This statute authorizes us to waive collection of erroneous payments of pay and allowances to a member if collection would be against equity and good conscience and not in the best interest of the United States. In her application for waiver, the member implicitly acknowledges that she owes a debt to the government, but requests the government to forbear its right of collection as a matter of equity. In cases like this, which involve erroneous payments of *per diem* pursuant to travel orders that the member thought were proper, waiver is only appropriate to the extent the member actually spent the payment for the purpose for which it was paid to him or her. *See, e.g.*, DOHA Claims Case No. 06030601 (March 24, 2006); DOHA Claims Case No. 03092220 (September 30, 2003); DOHA Claims Case No.

03061301 (July 31, 2003); and DOHA Claims Case No. 03040701 (April 15, 2003).

The basis of the request for reconsideration is not consistent with the waiver relief that the member had previously requested, but it sets forth a legal claim for reimbursement. While the member may pursue that claim with the Defense Finance and Accounting Service, ⁽¹⁾ this does not demonstrate error on the part of our adjudicators. The record contains no direct evidence showing how the remaining advances were applied to TDY expenses. For these reasons, our adjudicators reasonably concluded that collection of the balance of the advance (\$7,821.14) would not be against equity and good conscience.

Conclusion

The Settlement Certificate is affirmed. This is the final administrative decision of the Department of Defense on the member's waiver request.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

Signed: William S. Fields

William S. Fields

Member, Claims Appeals Board

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