

DATE: March 1, 2007

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In Re:

[Redacted]

Claimant

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Claims Case No. 07022606

**CLAIMS APPEALS BOARD**  
**RECONSIDERATION DECISION**

**DIGEST**

When a member is erroneously ordered to active duty training with *per diem*, and it is later determined that he is not entitled to *per diem*, waiver under 10 U.S.C. § 2774 is appropriate only for the amounts actually expended in reliance on the erroneous authorization.

**DECISION**

A lieutenant commander in the U.S. Navy requests reconsideration of the January 29, 2007, appeal decision in DOHA Claims Case No. 07012210. In that decision, DOHA denied in part the member's request for waiver of erroneous payments of *per diem*. The member received \$23,232.00 in erroneous travel payments. This Office waived \$17,877.00 and denied waiver of the remaining \$5,355.00.

**Background**

On April 7, 2006, the member was ordered to perform active duty training (ADT) from April 11, 2006, through September 30, 2006. During his ADT assignment the member was authorized *per diem*. He subsequently received \$23,232.00 in *per diem* for lodging, meals and incidentals. However, it was later determined that the authorization of *per diem* was erroneous. The member should have been ordered to perform a permanent change of station (PCS) because his ADT was over 139 days. As a result, he was not entitled to receive *per diem*, but was entitled to receive basic allowance for housing (BAH) and basic allowance for subsistence (BAS). The member subsequently received BAS in the amount of \$1,018.65, which compensated him for his meals.

On appeal to our Office, the member submitted receipts in the amount of \$18,895.65 reflecting that he spent \$18,751.65 for lodging and \$144.00 for laundry. The adjudicator accepted the member's documentary evidence of his lodging and other authorized expenses. The adjudicator first applied the member's BAS of \$1,018.65 to the \$18,895.65, therefore waiving \$17,877.00, the amount the member expended in excess of the BAS he received. However, the adjudicator denied waiver of the remaining \$5,355.00 because the member had not presented any further documentary evidence that he actually expended the remaining portion of the overpayment for lodging or meals. The member requests reconsideration of the remaining \$5,355.00. Additionally, he states that on September 29, 2006, when he checked out of the hotel, he was unable to settle his final hotel bill in the amount of \$6,923.84. He also states that since he was receiving reimbursements for his expenses, he continued to eat his meals with the notion that he was entitled to the *per diem* for meals and incidental expenses. He attaches a spread sheet to his reconsideration request reflecting a reconstruction of his meals and incidental expenses, totaling \$3,870.33.

**Discussion**

Under 10 U.S.C. § 2774, we have the authority to waive repayment of erroneous payments of travel expenses to a member if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. In the case of erroneously authorized travel payments, the member must have spent the payments in reliance on the erroneous authorization. *See* DOHA Claims Case No. 05102015 (November 2, 2005); DOHA Claims Case No. 03092220 (September 30, 2003); DOHA Claims Case No. 03061301 (July 31, 2003); and 67 Comp. Gen. 496 (1988).

*Per diem* is intended to reimburse a member for the lodging and meal expenses he incurs when he is not living at home. In the appeal decision, in response to the member's submission of receipts for lodging and authorized expenses, the adjudicator waived \$17,877.00. As explained above, this amount represents \$18,895.65 in receipts submitted by the member (\$18,751.65 for lodging and \$144.00 for laundry) minus \$1,018.65 for BAS paid to the member during the period in question. As for the balance of \$6,923.84 due on the member's final hotel bill, it does not appear that the member has paid this amount to the hotel.<sup>(1)</sup> Therefore, waiver of this amount is not appropriate.

In his request for reconsideration the member has provided documentary evidence that he spent an additional \$3,870.33 for meals and incidentals. The spread sheet lists expenditures made during the period July 2006 through September 2006, and reflects that the member was expending a daily average of \$29.32 for meals and incidental expenses. Therefore, waiver of an additional \$3,870.33 is appropriate, since the member also spent that amount in reliance on the erroneous travel order.

### Conclusion

We hereby waive an additional \$3,870.33 of the member's debt and deny waiver in the amount of \$1,484.67. In accordance with Department of Defense Instruction 1340.23, ¶ E8.15, this is the final administrative action of the Department of Defense.

Signed: Michael D. Hipple

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin

Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom

Member, Claims Appeals Board

1. Documentation submitted by the member shows that the Chief of U.S. Military Liaison Office in the country where the member was stationed on ADT has interceded on the member's behalf with the hotel. In addition, a request was submitted to the Navy and Marine Corps Relief Society to pay the final hotel bill.