

KEYWORDS: military member claim; untimely

DIGEST: Under the provisions of Department of Defense Directive 1340.21, the Defense Office of Hearings and Appeals generally must receive a claimant's request for reconsideration of an appeal decision within 30 days of the appeal decision.

CASENO: 07042414

DATE: 5/4/2007

DATE: May 4, 2007

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In Re: )  
          ) [REDACTED] )  
          ) ) Claims Case No. 07042414  
          ) )  
          ) )  
Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under the provisions of Department of Defense Directive 1340.21, the Defense Office of Hearings and Appeals generally must receive a claimant's request for reconsideration of an appeal decision within 30 days of the appeal decision.

**DECISION**

An Air Force service member requests reconsideration of the March 15, 2007, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 07020202. In that decision, our adjudicators sustained an initial determination of the Defense Finance and Accounting Service (DFAS) that the member could not be reimbursed for the fix-up

costs he incurred when he vacated his rental dwelling.

### **Background**

The record shows that the member rented a dwelling in Germany effective on March 2, 2003. A supplemental provision in his rental agreement provided that upon moving out, the member promised to pay € 3,067 for renovations. Our adjudicators found that it was customary in Germany for a departing renter to either personally renovate the rental property or to pay for renovation by the landlord, and this supplemental provision reflected that custom. An official in the military community housing office involved stated on March 19, 2003, that the member's "re-decoration fee will be reimbursed upon termination of his contract. At that time he needs to present us the receipt and we'll forward it to finance." The member terminated his lease effective June 28, 2006, and the landlord issued a receipt stating that the member paid € 3,067 for redecoration. The area financial services office involved denied reimbursement. In its initial determination DFAS advised the member that the redecoration fee was not payable because it was an expense that had been deferred until the end of the lease and could not be reimbursed. DFAS also concluded that the military community housing office's advice suggesting that payment was possible was erroneous.

The member stated that the area financial services office had been reimbursing redecoration fees as a Move-In Housing Allowance (MIHA) for other members when he signed his rental agreement in March 2003 and that this practice continued as late as April 2005. Our adjudicators examined volume 1 of the Joint Federal Travel Regulations (1 JFTR), updated through Change 234, June 1, 2006,<sup>1</sup> and, among other things, noted the following: 1 JFTR U10104-A states in part that MIHA is intended to defray move-in costs and "does not cover move-out costs." 1 JFTR U10104-B4b states that MIHA covers reasonable rent-related expenses, including redecoration fees, "if paid up-front." 1 JFTR Appendix K, part III, Table I, item 5 indicates that MIHA is payable for painting, papering and plastering "(upon arrival only)."

The member does not dispute our Office's current interpretation of the Joint Federal Travel Regulation provision on the MIHA entitlement, but he contends that he should not be adversely affected by a change in policy that had taken place after he signed his rental agreement. He argues that at the time he signed his rental agreement, finance officials construed the MIHA provision in 1 JFTR to allow payment of the type of redecorating expense he had to pay even though it was not actually paid until the termination of the lease. Our adjudicators explained that reimbursement for such a redecorating expense as MIHA is prohibited unless authorized for reimbursement by statute or regulation, and that volume 1 of the Joint Federal Travel Regulations, the regulation which governs this matter, does not authorize it. They also explained

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<sup>1</sup>Even if the adjudicators had reviewed volume 1 of the JFTR for March 2003, the language was similar; *e.g.*, 1 JFTR U9107-A stated that MIHA "is not intended to cover move-out costs" and 1 JFTR Appendix K, part III, Table I, item 5 indicated that MIHA was payable for painting, papering and plastering "(upon arrival only)."

that the Federal government is not bound by the erroneous or negligent acts of its officers, employees or agents that are not in accord with authority given to them by statute or regulation. Our adjudicators also indicated that our Office cannot waive the application of volume 1 of the Joint Federal Travel Regulations or grant exceptions to it. *See, e.g.*, DOHA Claims Case No. 98120402 (January 14, 1999). Finally, our adjudicators advised the member that under DoD Instruction 1340.21, ¶ E7.13,<sup>2</sup> DOHA may accept a request for reconsideration from the member, but that such a request had to be received by DOHA within 30 days from the date of the March 15, 2007, decision. The adjudicators noted that time may be extended for good cause and provided a fax number to reach our Office to help the member avoid forfeiting his rights due to a late response. DOHA received the claimant's request for reconsideration on April 24, 2007.

### **Discussion**

The member's request for reconsideration is untimely. His statement that his response "is four days outside the normal 30-day window" because he was unable to reach his claims examiner for advice, does not satisfy the "good cause" requirement. For this reason alone, we cannot reconsider the appeal decision. However, our adjudicators reasonably explained the limitations of our Office's authority to allow a claim where such reimbursement is not authorized by statute or regulation, and how the erroneous advice of government officials to a claimant can not estop the government from denying benefits not otherwise permitted by law. In this regard, see the U.S. Supreme Court decision *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), *reh'g denied*. The member may wish to address this matter more fully with his Service's representatives on the Per Diem, Travel and Transportation Allowance Committee.

### **Conclusion**

The claimant's request for reconsideration is denied, and we affirm the March 15, 2007, appeal decision in DOHA Claim No. 07020202 disallowing the claim. In accordance with DoD Instruction 1340.21, ¶ E7.15.2 this is the final administrative action of the Department of Defense in this matter.

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

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<sup>2</sup>This provision is also codified at 32 C.F.R. Part 282, Appendix E, subparagraph (m).

Member, Claims Appeals Board

Signed: William S. Fields

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William S. Fields  
Member, Claims Appeals Board