

DATE: April 25, 2007

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In Re:

[REDACTED]

Claimant

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Claims Case No. 07041204

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

**DIGEST**

While stationed overseas a member planning his retirement from the United States Air Force was erroneously advised that he was entitled to temporary lodging expense (TLE) upon his return to his home of record. For a member in this situation, payment of TLE is not authorized under regulation or statute. Erroneous information does not provide a basis for payment of allowances, since the government is not liable for erroneous information provided by its officers, agents, and employees.

**DECISION**

This is in response to a request for reconsideration of the decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 06122607, dated February 9, 2007. In that decision, our Office denied the member's claim for Temporary Lodging Expense (TLE).

**Background**

The member was on active duty in the United States Air Force (USAF) stationed in Italy when he made plans for his retirement. He planned to retire at his home of record in the Los Angeles area. Personnel at the billeting office at Los Angeles Air Force Base (LAAFB) advised him that the temporary lodging facility at Fort MacArthur, California, was fully booked. Believing that the member's travel was for the purpose of a permanent change of station (PCS), they erroneously advised the member he would be entitled to TLE for up to ten nights of lodging if a non-availability statement was provided. The LAAFB travel office advised him that he would receive \$200 per night for up to ten nights for a total of \$2,000. Based on this information, the member subsequently made lodging reservations and lodged for eight nights at various hotels for a total of \$1,375.80. When the member claimed the TLE for his lodging in California, the claim was denied.

On appeal, our Office sustained the denial of TLE, and now the member is requesting reconsideration of that denial. In his reconsideration request, he states that he should not be held at fault for the erroneous information he received from personnel at LAAFB. He states that the personnel at LAAFB had a responsibility to ask him about the purpose of his travel and they should be held liable for their erroneous actions. He also asserts that the language "leaving active duty," in paragraph U5705-B of the Joint Federal Travel Regulations (JFTR) does not apply to his situation. He states that he was taking 120 days of "hard-earned terminal leave" during which he was still on active duty. Therefore, this language should not include his situation, especially since since his family had to fly half-way around the world and should be allowed a reasonable time to find lodging.

**Discussion**

Payment of TLE is governed by 37 U.S.C. § 404a and volume 1 of the Joint Federal Travel Regulations, chapter 5, part H. The purpose of TLE is to reimburse a member at least in part for lodging and meal expenses he incurs while he is without a permanent residence during a PCS move in a contiguous United States (CONUS) location. *See* ¶ U5012-H of 1 JFTR. The underlying statutory entitlement to TLE found in 37 U.S.C. § 404a, defines the type of PCS the member must make in order to be authorized TLE. The member must make a PCS from one duty station to another duty station. <sup>(1)</sup> Paragraph U5705-B1 of the JFTR states that a member is not authorized TLE when leaving active duty.

A member's pay and allowances are governed by the applicable statutes and regulations. Therefore, erroneous information supplied by government officers, agents, or employees cannot

serve as a basis for payment of pay or allowances in excess of a member's entitlements.

*See* DOHA Claims Case No. 97110305 (January 12, 1998). In addition, our Office has no authority to make exceptions to existing statutes and regulations or make changes to them. We must render our decisions based on existing statutes and regulations in adjudicating travel claims.

In this case, the member left his permanent duty station overseas in August 2006 to return to his home of record. He left his duty station in Italy, but was not assigned a new duty station in California. He took 120 days of terminal leave prior to his retirement on January 1, 2006. He was on terminal leave when he incurred the lodging expenses. He never reported for duty at LAAFB. We have no authority to allow the member's claim in the present situation because neither statute or regulation authorize it. Although the member was misinformed regarding payment of TLE, that does not provide a basis for payment since the government is not liable for the erroneous acts of its officers, agents, or employees. *See* DOHA Claims Case No. 97110305, *supra*.

### **Conclusion**

The member's request for reconsideration is denied, and we affirm the February 9, 2007, appeal decision in DOHA Claim No. 06122607 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: Jean E. Smallin

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Jean E. Smallin

Acting Chairman, Claims Appeals Board

Signed: William S. Fields

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William S. Fields

Member, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom

Member, Claims Appeals Board

1. *See* 37 U.S.C. § 404a(a)(2)(A), "A permanent change of station from any duty station to a duty station in the United States (other than Hawaii or Alaska)."

