

KEYWORDS: military member claim; TDY

DIGEST: A reservist who was performing Temporary Duty (TDY) in the United States away from his home of record was ordered to Kuwait on Temporary Change of Station orders, the equivalent of TDY. His entitlement to lodging expenses at the first TDY site ceased because he was no longer performing TDY duty there.

CASENO: 07052302

DATE: 6/13/2007

June 13, 2007

In Re:)
 [Redacted]) Claims Case No.07052302
)
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A reservist who was performing Temporary Duty (TDY) in the United States away from his home of record was ordered to Kuwait on Temporary Change of Station orders, the equivalent of TDY. His entitlement to lodging expenses at the first TDY site ceased because he was no longer performing TDY duty there.

DECISION

A member of the United States Army Reserve requests reconsideration of the May 3, 2007, appeal decision of the Defense Office of Hearing and Appeals (DOHA) in DOHA Claim No. 07022607. In that decision, our adjudicators sustained an initial determination of the Defense Finance and Accounting Service (DFAS) that the member was not entitled to reimbursement for lodging expenses at his prior duty station in Pennsylvania.

Our adjudicators set out the facts of the claim in the appeal decision, and we will not repeat them here. The adjudicators noted that the Army uses the term “Temporary Change of Station” (TCS) to describe certain types of Temporary Duty (TDY) orders. Additional research indicates that soldiers (including those from reserve units) deploying to a theater of operations or in execution of a OPLAN, will be deployed in a TCS status for personnel accountability purposes unless otherwise directed. The soldier is generally expected to return to his permanent station upon completion of the temporary duty on the contingency operation. *See, e.g., Army Regulation (AR) 600-8-6 ¶ 6-6 (September 24, 1998).*

Our appeal decision separately considered the member’s entitlements under volume 1 of the Joint Federal Travel Regulations (JFTR), the regulation that controls travel entitlements for uniformed service members, but which does not use the term TCS. For purposes of determining the member’s travel entitlements, our adjudicators properly viewed the TDY assignment and the assignment to the contingency operation as successive TDY assignments. The adjudicators concluded that the member was not entitled to the reimbursement he claimed for his house in Pennsylvania while on TDY in Kuwait because the amount claimed for the house was the lodging cost during the first temporary assignment. The member had moved on to a successive temporary assignment in which the government provided lodging in kind. The adjudicators considered various possible applications of the JFTR to the member’s situation to find a basis for payment, but concluded for the reasons stated in the decision that the member’s claim was not payable under the JFTR. The analysis of the issue in the appeal decision is reasonable, and the member offered no contrary legal analysis that would suggest a different result.

The member demands proof from DOHA that his orders were legal, and he requests that DOHA initiate legal or administrative action against the Army for issuing orders that he considers illegal. This Office has no authority to take action against a military department on its issuance of orders. The burden of proof is on the member to prove by clear and convincing evidence that he is entitled to the pay and allowances he claims. *See DoD Instruction 1340.21 ¶ E5.7 (May 12, 2004).* The general assertions of illegality that the member offered in his reconsideration request fail to meet the burden of proof.

Conclusion

The member’s request for reconsideration is denied, and we affirm the May 3, 2007, appeal decision in DOHA Claim No. 07022607 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

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board