

KEYWORDS: member travel claim; rental of yacht

DIGEST: Under Department of Defense Instruction 1340.21 (May 12, 2004), the claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed.

CASENO: 0903112

DATE: 3/30/2009

DATE: March 30 2009

In Re:	)	
[REDACTED]	)	
Claimant	)	Claims Case No. 09031102

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

Under Department of Defense Instruction 1340.21 (May 12, 2004), the claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed.

**DECISION**

A member of the United States Marine Corps Reserve requests reconsideration of the

February 12, 2009, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 09010901. In the appeal decision, DOHA adjudicators disallowed the member's claim for reimbursement for the rental of a yacht as temporary quarters.

## **Background**

On orders dated May 30, 2006, the member was directed to perform active duty-special work at Marine Corps Air Station (MCAS) Miramar, California, near San Diego. The orders authorized him quarters, if available, at \$26.00 per day. If quarters were not available, he was directed to obtain a written statement from the appropriate military representative. The orders advised the member he would be authorized the actual expense of lodging not to exceed the *per diem* rate for the San Diego area. The member arrived at MCAS Miramar on May 30, 2006, but was unable to secure quarters or commercial lodging.

The record shows that on May 7, 2002, the member, as the registered agent, filed with the state of California, articles of incorporation for the corporation called JKMIG, Inc. The corporate filing record reflects that the member is the president of JKMIG; it lists no other officers. On September 11, 2002, the member's wife filed to incorporate Diet Delicious in the state of California. On June 13, 2005, Diet Delicious' name was changed to JKMIG. JKMIG subsequently purchased a yacht. On August 4, 2006, the member signed a Recreational Vehicle Lease Agreement for the yacht for the period August 4, 2006, through June 30, 2007, at the rate of \$115.00 per day.<sup>1</sup> The member signed the agreement as tenant and his wife signed on behalf of JKMIG, as the landlord. When the member submitted his first voucher after renting the yacht, the Marine Corps Mobilization Processing Command returned it unpaid on the (erroneous) grounds that a yacht could not be rented as temporary lodging under volume 1 of the Joint Federal Travel Regulations (JFTR). The member resubmitted the voucher and was subsequently paid. On June 6, 2008, the member was discharged from active duty. By memorandum dated July 7, 2008, the Marine Corps informed the member that he had been overpaid \$51,022.20 for travel. The member disputed the debt, and the Defense Finance and Accounting Service (DFAS) found that collection was authorized. DFAS acknowledged that even though volume 1 of the JFTR allows a member on TDY to purchase a yacht as a residence,<sup>2</sup> paragraph U4129-E prohibits any reimbursement for lodging with a friend or relative of the member. DFAS concluded that since the member rented the yacht from a corporation he and his wife owned, he had rented the yacht from himself and a relative, and that the lodging reimbursements the member received were erroneous in nature. Our Office agreed with DFAS and denied the member's claim for reimbursement of rental of the yacht.

---

<sup>1</sup>The maximum *per diem* rate for the San Diego area between June 1 and September 30, 2006, was \$120.00.

<sup>2</sup>Paragraph U4137 of volume 1 of the JFTR limits reimbursement to mortgage interest and property tax when the member purchases a boat.

In his reconsideration request, the member states that there were inaccuracies in the appeal decision. He states that JKMIG's primary purpose from February 2005 to the present has been the buying, selling and renting of properties, not as a health and diet food business as DOHA stated. The member attaches copies of the yacht rental receipts and the monthly vouchers that DOHA stated were not in the record. He argues that JKMIG is a legal entity which exists separately from its owners and cites to legal definitions of corporation contained on various websites including a website containing the State of California legal definition of a domestic corporation. He disagrees with DFAS and DOHA citing to DOHA Claims Case No. 04020503 (February 18, 2004), as authority for denying his claim. The member argues that unlike the member in DOHA claims Case No. 04020503, *supra*, he did not rent from a friend or relative. The yacht he rented was owned by a legal California corporation. The member states that the lease of the yacht was completed at arms-length between JKMIG and himself and that all federal and state formalities were completed. He states that the yacht was a working asset of JKMIG, not vacation property. The member also argues that there is not a definition of "friends or relatives," in the JFTR, and since a corporation is neither, this section cannot be used to deny his claim. In the alternative, the member requests waiver of the debt.

### **Discussion**

Under DoD Instruction 1340.21 (May 12, 2004), the claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed. All relevant evidence to prove the claim should be presented when a claim is first submitted. In the absence of compelling circumstances, evidence that is presented at later stages of the administrative process will not be considered.

Volume 1 of the JFTR, ¶ U4129-E, states "Reimbursement for lodging cost when staying with friends or relatives is not authorized." Under this rule, a member is not entitled to reimbursement for lodging expenses when he stays with a friend or relative while on TDY, even though he may have paid rent. *See* 60 Comp. Gen. 57 (1980). In his reconsideration request the member argues that JKMIG, as a corporation, is a distinct legal entity and therefore cannot be considered a friend nor a relative under the JFTR. The interpretation of U4129-E by DFAS, the Marine Corps and our adjudicators, as it applies to the member in this situation, reflects a well-established interpretation of the underlying statutory entitlement found at 37 U.S.C. § 404. The Comptroller General has recognized that the purpose of the prohibition against reimbursing friends and relatives is to eliminate potential abuses from occurring in connection with claims involving lodging with friends or relatives. *See* DOHA Claims Case No. 04020503 (February 18, 2004), 60 Comp. Gen. 57, *supra*, and B-199683, Feb. 24, 1982.

As stated in the appeal decision, our Office must settle claims in accordance with applicable law, regulations and administrative decisions. DFAS, the Marine Corps and our adjudicators did not find any distinction between the corporation ( JKMIG) and the member and his wife. The *per diem* allowance authorized by statute is for the purpose of reimbursing members for the more than normal expenses to which they are put in obtaining quarters and

subsistence while in a transient status. *See* 63 Comp. Gen. 37 (1983) and 44 Comp. Gen. 740 (1965). In this case, since the member was paying rent to a corporation owned by himself, there was no rental expense to reimburse. There is no evidence in the record that there are other shareholders in JK MIG other than the member and his wife. Although the member argues that JK MIG bought the yacht as a working investment, the record reflects that JK MIG purchased the yacht for the specific purpose of providing the member with quarters. The member has not provided information regarding business activities of the corporation other than the rental agreement leasing the yacht to himself. The existence of a corporation in which the member is the president does not satisfy the Comptroller General's concern with the potential abuses that may occur in connection with claims involving lodging with friends or relatives. While the government reimburses costs of lodging which are incurred through a business relationship, we do not see this as such an arrangement. Under these circumstances, it appears that the transaction was made between closely-related parties, not an arms-length transaction, and for the benefit of the member, the landlord or both.<sup>3</sup>

The burden of establishing the liability of the United States to pay a claim is on the claimant. The member's claim for reimbursement for the rental of a yacht (from a corporation owned by the member and his wife) used as his temporary quarters is denied because paragraph U4129-E of volume 1 of the Joint Federal Travel Regulations prohibits reimbursement for lodging with a friend or relative of the member. The member has provided no documentation to establish the liability of the United States to pay his claim.

As for the member's request that his debt be waived, he may submit his request for waiver under 10 U.S.C. § 2774 in accordance with DoD Instruction 1340.23 (February 14, 2006) through the component concerned. It is the waiver applicant's responsibility to submit the waiver application properly.

### **Conclusion**

The member's request for reconsideration is denied, and we affirm the February 12, 2009, appeal decision in DOHA Claim No. 09010901 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

---

Jean E. Smallin

---

<sup>3</sup>The Recreational Lease Agreement, paragraph 3, indicates that the yacht was to be used as living quarters for the member, and for one additional adult and one child for temporary use. The additional adult listed was the landlord indicated on the lease, the member's wife. The member's wife signed the rental documents as landlord, proper manager or agent of the corporation, although she is not listed as an officer of the corporation in the documents submitted by the member. The fact that the "landlord" listed on the rental documents actually occupied the property with the member is a further indication that the transaction was not at arms-length.

Acting Chairman, Claims Appeals Board

Signed: Natalie Lewis Bley

---

Natalie Lewis Bley  
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

---

Catherine M. Engstrom  
Member, Claims Appeals Board