

KEYWORDS: member travel claim

DIGEST: The child of a member stationed in the United States died while attending college in another state. The member's unit improperly issued orders to the member to cover the expenses of the member and his spouse to travel to the site where the dependent died to make arrangements for the disposition of the remains of the dependent. For a member in this situation, no statutory or regulatory authority exists to pay for such travel. The member's claim must be denied because the government is not liable for the erroneous actions of its officers, agents, or employees.

CASENO: 09040901

DATE: 5/01/2009

DATE: May 1, 2009

In Re:	)	
[REDACTED]	)	Claims Case No. 09040901
Claimant	)	

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The child of a member stationed in the United States died while attending college in another state. The member's unit improperly issued orders to the member to cover the expenses of the member and his spouse to travel to the site where the dependent died to make arrangements for the disposition of the remains of the dependent. For a member in this situation, no statutory or regulatory authority exists to pay for such travel. The member's claim must be denied because the government is not liable for the erroneous actions of its officers, agents, or employees.

## **DECISION**

A member requests reconsideration of the February 17, 2009, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claims Case No. 08122203. In that decision, DOHA sustained the initial determination of the Defense Finance and Accounting Service (DFAS) denying reimbursement of the travel claim for him and his spouse to claim the remains of their dependent son from college and make arrangements for interment, in the amount of \$4,347.26.

### **Background**

The member was advised of the death of his son at college. The member advised his unit, which immediately began to look into the Air Force paying for the member and his spouse to travel to the son's college to claim the remains, make final arrangements, and collect his belongings. The member and his spouse were stationed in the United States, and his son was attending college in another state. After researching the issue, it was determined that mortuary funds could not pay for such travel, but it was suggested that squadron operation & maintenance funds might be able to be used as invitational travel. The mortuary officer misheard "might" as "could" and so advised the Acting Commander. Travel arrangements were made for the member and his spouse for travel, lodging, and rental car based on the verbal orders of the Acting Commander. The local contract travel office initially refused to issue the tickets, but did so at the urging of senior military officials. A written travel order was produced later.

The member and his spouse traveled to the college and made arrangements for burial. They remained there for three days and had return tickets scheduled to fly back to the member's home unit at that time. The mortuary tried to arrange shipment of the remains on the flight on which they were returning, but there was no space available at that time. The member and his spouse opted not to remain longer, and returned on the scheduled flight. After returning, the member claimed reimbursement for the airline tickets with an excess baggage charge, hotel lodging, and car rental fee. This claim was disallowed, first by the Air Force and later by DFAS, both citing para U7205 of volume 1 of the Joint Federal Travel Regulation (JFTR), that the travel did not qualify for emergency leave travel.

The DOHA adjudicator reviewed the requirements of 1 JFTR U7205-B, and determined that neither the member nor his spouse qualified for emergency leave travel. The DOHA adjudicator then reviewed what he considered to be the only other possibility for reimbursement in the regulation and that was "an escort accompanying the remains". Due to the fact that escort for this purpose was not defined in either the JFTR or the implementing Air Force Regulation, the adjudicator looked to administrative decisions, and determined that an "escort" for purposes of Government-paid travel must travel on the same conveyance at the same time as the deceased person's remains. Since the member and his wife traveled on a different flight than their son's

remains, they could not be reimbursed.

In his request for reconsideration, the member points out contrary to the adjudicator's position that there is a definition of the word escort, it's defined at 1 JFTR U7550-A. He argues that his travel meets the definition outlined there. He requests that other considerations should enter into the definition of the term "escort", such as ensuring the delivery of remains to the place of burial, following the orders of his chain of command, and the act of claiming his son's remains and making arrangements with the mortuary. As to the interpretation of the case law by the adjudicator (Comptroller General Decision B-195027, March 12, 1980), the member asserts that it is unclear from the case whether the member was actually on the same flight with the remains or not. He points out that he is actually more deserving than the individual in the Comptroller General case. He did not request the entitlement, but rather all the arrangements were made for him by his chain of command, and he had no part in making any of the reservations. Finally, he asserts that even if he had arranged for the remains to be shipped on the same flight, the civilian airlines could have changed the flight route for his son's remains without informing him based on the amount of cargo on the flight. The member requests if the appeal is denied, that DOHA still pay the debt, as all these costs were placed on his government travel card, which he is required to have. He disputed the debt with the travel card company, but was unsuccessful, and to avoid punishment for a delinquent account, he was forced to pay the debt. Aside from all of the above, if these requests are unsuccessful, the member requests that DOHA waive the debt and/or refund erroneous payments.

### **Discussion**

We recognize the unfortunate circumstances that the member and his family experienced. However, a claimant must prove, by clear and convincing evidence on the written record, that the government is liable to him for the amount claimed. *See* Department of Defense Instruction 1340.21, ¶ E5.7 (May 12, 2004). This Office must render decisions in accordance with applicable laws and regulations, and where there is no provision in a statute or regulation for reimbursement of certain travel, we cannot allow payment.

The appeal decision considered the applicability of 1 JFTR U7205-B (involving transportation in personal emergencies), and found that it did not apply to the member's circumstances. The member did not dispute this conclusion, and it is not in issue here.

The only other possible entitlement that may cover the member's situation are provisions in 1 JFTR U7600, involving the transportation of the remains of deceased members and deceased dependents, and 1 JFTR U7601, for *per diem* allowances for travel and TDY of a member "in connection with escorting the remains of a deceased member." The implementing Air Force regulation, Air Force Instruction (AFI) 24-101, ¶ 3.22.1 states that "Escorts (military or civilian) for the remains of deceased Air Force military personnel or their family members are authorized travel as provided in the JFTR, par. U7601," but 1 JFTR U7601 does not provide for an escort for the remains of a deceased dependent or authorize payment of escort travel expenses for non-

members for this purpose.<sup>1</sup>

The entitlements contained in volume 1 of the JFTR and service regulations are derived from title 10, United States Code (U.S.C.), Chapter 75, *i.e.*, Sections 1475 through 1491. The source statute for some of the provisions in Chapter 75 involving the recovery, care, and disposition of the remains of members and others, including dependents, is the Act of July 15, 1954, ch. 507, 68 Stat. 478-481 (hereafter Pub. L. No. 68-495). Reimbursable expenses incident to the death of a dependent of an active duty member are specified at 10 U.S.C. § 1485.<sup>2</sup> Within a few years of the enactment of Pub. L. No. 68-495, the Comptroller General had the opportunity to construe the statute and decide questions involving entitlements based on it. It is significant that the Comptroller General strictly construed reimbursements and allowed claims for escort-related expenses only for the reasons specifically authorized by the statute. *See* B-127228, Oct. 1, 1956. Section 1485 does not authorize reimbursement for the escort of the remains of a dependent, and the implementing regulations are consistent with this.<sup>3</sup>

We understand that the member had undertaken travel based on the erroneous information that he was provided verbally and in writing, including a written travel order. However, it is well-established that the government is not bound or made liable by the erroneous advice and actions of its officers, agents, or employees, even when committed in the course of their official duties. *See* DOHA Claims Case No. 08122401 (January 8, 2009), where we held that a member's entitlement to travel allowances cannot be increased by erroneous information provided by government representatives.

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) to the Defense Finance and Accounting Service.

### **Conclusion**

The member's request for reconsideration is denied, and we affirm the February 17, 2009, appeal decision for the reasons stated in this decision. In accordance with DoD Instruction 1340.21, ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

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<sup>1</sup>We compared the implementing regulations of other services on this issue. The Army's implementing regulation states that escort travel is authorized for the remains of military members and not for deceased dependents, *see* AR 638-2, chapter 12 and table 2-1. *See also* the Navy's related website for mortuary benefits.

<sup>2</sup>Provisions involving expenses in connection with deceased dependents of active duty uniformed service personnel were contained in Section 7(a) of Pub. L. No. 68-495, 68 Stat. at 479.

<sup>3</sup>We also considered 10 U.S.C. § 1036 which provides for escorts for dependents of members where the dependent cannot travel alone. This does not fit the circumstance here, and it is grounded in the death or absence of the member (not a dependent).

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Michael D. Hipple  
Chairman, Claims Appeals Board

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Jean E. Smallin  
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