

KEYWORDS: travel claim; Fly America Act

DIGEST: A member performing circuitous travel pursuant to a permanent change of station purchased tickets from a foreign flag carrier in violation of the Fly America Act, 49 U.S.C. § 40118. Reimbursement of the member is not proper under the Fly America Act unless he can provide the appropriate documentation required under paragraph U3125-C of volume 1 of the Joint Federal Travel Regulations to show the non-availability of a flight on an American carrier. Lack of awareness of the law does not justify failure to comply with it.

CASENO: 09032301

DATE: 4/02/2009

DATE: April 2, 2009

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In Re:)	
[REDACTED])	Claims Case No. 09032301
)	
Claimant)	
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**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

A member performing circuitous travel pursuant to a permanent change of station purchased tickets from a foreign flag carrier in violation of the Fly America Act, 49 U.S.C. § 40118. Reimbursement of the member is not proper under the Fly America Act unless he can provide the appropriate documentation required under paragraph U3125-C of volume 1 of the Joint Federal Travel Regulations to show the non-availability of a flight on an American carrier. Lack of awareness of the law does not justify failure to comply with it.

DECISION

A member of the United States Marine Corps (USMC) requests reconsideration of the

February 23, 2009, Appeal Decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 09012201. In that decision DOHA disallowed the member's claim for reimbursement for the costs of air travel on foreign flag carriers from France to Japan incident to his Permanent Change of Station (PCS) to Japan in 2007.

Background

The record indicates the member is a member of the USMC and has a dependent wife and four minor children. Pursuant to PCS web orders dated March 20, 2007, the member was directed to transfer from Quantico, Virginia, to Japan, with training en route at NAS Oceana, Virginia. These orders were modified on April 23, 2007, to authorize use of a rental car and to make some accounting changes. The first endorsement to the orders, dated May 31, 2007, directed the member to report to NAS Oceana by June 4, 2007.

The member arrived at NAS Oceana, Virginia, June 3, 2007, and contacted Marine Corps Headquarters about obtaining permission for circuitous travel via France to Japan. A major advised the member that he should not have trouble obtaining permission if he had the funds to cover additional costs. The member wanted to have his dependents spend time with his in-laws in France, prior to relocating to Japan. The member and his dependents traveled to France separately, arriving over the period June 21-23, 2007. After a period of leave the member returned to NAS Oceana on July 13, 2007. The member then discussed the matter of his dependents traveling from France to Japan with a lieutenant colonel at Marine Corps Headquarters. She advised him to contact the administrative department at Oceana. The member did so and advised the person he described as an "administrative officer" of his travel plans and his conversations with the two officers from Marine Corps Headquarters. The member states that none of these persons warned him about the Fly America Act or limitations on circuitous travel. The member then booked flights on foreign flag carriers for himself and his dependents from France to Japan.¹ The member showed the itinerary to the administrative officer, who advised him that reimbursement would be limited to the cost of Government travel from Quantico to Japan. The personnel officer, in Oceana, issued the member a memorandum dated September 24, 2007, which stated, "5. Use of foreign flag carrier is authorized if exceptions identified in the JFTR [Joint Federal Travel Regulations] paragraph U3125C (2) N/A are met."

In his request for reconsideration, the member notes that the decision not to reimburse the claim was based on not having written certification. He states that the administrative officer advised that a submission for an exception for foreign flag carrier travel would not be necessary because approval had been granted for travel via France and no U.S. flag carrier service from

¹ The member booked passage for himself and his spouse and four minor children on Cathay Pacific Airways from France to Hong Kong and on Hong Kong Dragon Airlines from Hong Kong to Japan. Both airlines are Chinese flag carriers based in Hong Kong. Hong Kong Dragon is a Cathay Pacific subsidiary.

France to Japan was available. The member argues that he should be able to rely on the advice of the administrative officer, the person who is responsible for the information. The member argues he was trying to follow the rules, and he should not be held accountable for varying interpretations of complex travel regulations. The member points out that he was following the advice of his administrative officer and was unaware that there was different guidance until he attempted to settle his claim. The member states he does not believe it was the intent of the U.S. Government for him to pay the cost of moving his family.

Discussion

Under the Fly America Act, 49 U.S.C. § 40118, a government agency must take necessary steps to ensure that passengers flying at government expense use certificated U.S. flag carriers, unless the necessity for using a non-certificated carrier is proven in accordance with applicable regulations. At the time the member traveled, those regulations were contained in volume 1, Joint Federal Travel Regulation (JFTR), updated through Change 250. Under 1 JFTR ¶ U3125-C, a U.S. flag carrier must be used if available. The exceptions describing non-availability are contained in 1 JFTR ¶ U3125-C2. However, as a condition precedent to payment from government funds, the authorizing order-issuing official must authorize/approve use of a non-certificated carrier by a written and signed statement specifically explaining the reasons for non-availability. See 1 JFTR ¶ U3125-C3. See also Comptroller General decision, B-206723, Oct. 21, 1982.² Although the member was authorized to personally procure his tickets and travel over a circuitous route, he was not authorized to fly on a foreign-flag carrier, and has not provided a certificate as required by 1 JFTR ¶ U3125-C3, which would help demonstrate the necessity for such travel. The record lacks a sufficient basis for us to conclude that a certificated U.S. flag carrier was unavailable. Lack of knowledge of the requirements of the Fly America Act does not provide a basis for payment of the member's claim. See DOHA Claims Case No. 97121518 (February 10, 1998), and Comptroller General decision B-206723, *supra*.

Finally, the fact that the member was given misinformation by both transportation officials and military officials regarding reimbursement for travel, does not provide a legal basis for reimbursement, since the government is not liable for the erroneous or negligent actions of its officers, agents, or employees. See DOHA Claims Case No. 96070222 (January 27, 1997).³

² The Comptroller General has disallowed all expenditures for commercial transportation on non-certificated air carriers unless there was attached a certificate or memorandum adequately explaining why service by certificated air carriers was unavailable.

³ Our review of the record in this case suggests that the member sought advice on a number of occasions from individuals whom he should have been able to rely upon, but those

Conclusion

The member's request for reconsideration is denied. We affirm the February 23, 2009, Appeal Decision in DOHA Claim No. 09012201 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: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board

assisting him were less than helpful. They should have either: (1) advised the member not to use his proposed foreign carriers; or (2) obtained justification in writing from the authorizing/approving official, meeting the requirements of 1 JFTR ¶ U3125-C3, demonstrating that a certificated carrier was not available.