

DATE: January 27, 1997

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In Re:

[Redacted]

Claimant

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Claims Case No. 96070222

## CLAIMS APPEALS BOARD DECISION

### DIGEST

The Government cannot be bound by the erroneous act of its agents, even when committed in the performance of their official duties. Neither misrepresentation by a transportation officer nor misinformation provided by military officials provides a legal basis for reimbursement of additional travel costs.

### DECISION

A member of the uniformed services requests reimbursement for consecutive overseas tour (COT) travel expenses since he incurred expenses in excess of the amount allowed by the applicable regulations when he relied on erroneous information provided by the travel office. The claim was previously submitted to the General Accounting Office (GAO). In GAO Settlement Certificate Z-2869503, dated June 28, 1995, GAO disallowed the member's claim stating that the member had been reimbursed in accordance with applicable statutes. Pursuant to Public Law No. 104-316, October 19, 1996, title 31 of the United States Code, Section 3702, which provides for settlement of claims against the United States was amended to provide that the Secretary of Defense shall settle claims involving uniformed service members' pay, allowances, travel, transportation, retired pay and survivor's benefits. The Secretary further delegated that authority to this Office.

### Background

The member's orders state that travel was authorized by U.S. Flag commercial carrier and that the member must fly on a United States-owned airline to receive reimbursement. Family members were authorized to claim reimbursement for the cost of travel to no farther than the home of record. At issue is the travel of two of his children who traveled to Los Angeles (his home of record) on July 15, 1992.

Prior to purchasing tickets for his children at his own expense, the member asked the official duty travel office for the applicable reimbursement rate for travel to Los Angeles. He was told by the travel office that the rate was \$1238, per person, for round trip travel to Los Angeles. The member states that based on this information, he purchased their airline tickets. He states that he purchased the most inexpensive military rate tickets, which totaled \$1136 per child.

When he was reimbursed for the travel, he received only \$754 per ticket. He was apparently told that the original amount that he had been quoted was the amount that had been paid for that travel in the past, but that the then-current rate was \$754. Thus, he had been paid the appropriate amount.

The member apparently had great difficulty in getting his claim processed and was required to submit it on more than one occasion. He apparently was told that he could submit a request for an "Exception to Policy for Reimbursement for COT Leave." It appears that he was erroneously informed that there was a procedure titled "Exception to Policy" under which he might receive further reimbursement. The file contains numerous recommendations from finance offices that the member be further reimbursed.

The claim was then forwarded to the Defense Finance and Accounting Service (DFAS). DFAS, which is sympathetic with the member's situation, is unable to find any authority to pay the claim. The matter was forwarded to GAO. In its

Settlement Certificate, GAO stated that while it was regrettable that the member had received inaccurate information concerning applicable rates, a member's rights are based on the statutory entitlement rather than on such information, and that since the member had been reimbursed in accordance with applicable regulations, the claim was disallowed.

### **Discussion**

The applicable regulation for travel of members in connection with leave taken between consecutive overseas assignments is found in the Joint Federal Travel Regulations (JFTR), Paragraph U7200. The regulation in effect at the time of travel provided that if a member whose orders did not direct him to use Government or Government-procured transportation procured transportation by common carrier at personal expense, reimbursement was limited to the cost of Government or Government-procured transportation for the authorized distance.

As noted by GAO, the Government cannot be bound by the erroneous act of its agents, even when committed in the performance of their official duties. The Comptroller General has held that neither misrepresentation by a transportation officer nor misinformation provided by military officials provides a legal basis for reimbursement. Major Robert W. Magnuson, USMC, B-195420, Jan. 9, 1980; Sergeant Jeffrey A. Collins, USAF, B-219850, Feb. 19, 1986; and Lieutenant Colonel Wayne C. Boyd, USA, B-209105, Apr. 22, 1983. He has also held that no authority exists for an official of the United States to authorize entitlements which are precluded from being paid by statute and regulation. Robert E. Lawless, B-203527, Mar. 10, 1982. The travel and transportation entitlements of a member of the uniformed services are for computation under the statute and regulations in effect at the time the travel is performed. Sergeant Paul D. Wilson, USMC, 65 Comp. Gen. 884 (1986).

In the present case, the member was given erroneous information based on rates in effect at an earlier time. Under the applicable statutes and regulations in effect at the time of travel, the member was entitled to receive \$754 per ticket for the travel involved. The fact that the travel office quoted a different, higher amount does not provide a legal basis to pay a higher amount. Neither are we aware of any legislation or regulation which would allow an "Exception to Policy."

The authority for settlement of claims delegated to this office from GAO did not add authority to allow exemptions or exceptions to the applicable statutes or regulations which govern transportation of members of the uniformed services. While we also sympathize with the circumstances of the member and his reliance on erroneous information, we have no authority to allow payment of further travel expenses, since the member has already received the amount authorized by the laws in effect at the time the travel was performed.

### **Conclusion**

Accordingly, we affirm GAO's Settlement Certificate.

Signed: Christine M. Kopocis

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Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin

Member, Claims Appeals Board

Signed: Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board