

DATE: November 4, 1996

---

In Re:

[REDACTED]

Claimant

Claims Case No. 96070227

## CLAIMS APPEALS BOARD DECISION

### DIGESTS

1. Member who was denied per diem while on disciplinary travel submits new evidence on appeal that states he was assigned duties while at the TDY site. New evidence does not overcome the Joint Federal Travel Regulation (JFTR) denial of per diem for members on disciplinary travel. The member's travel order contemplated the member's attendance at his disciplinary action, not full-time work.
2. Method of calculation for oil and gas reimbursement under JFTR, Volume I, U7450 suggested by member, standard flat rate per mile, is not appropriate where receipts are unavailable. If the member presents evidence of oil and gas expenses actually expended for travel by privately owned vehicle to his disciplinary proceedings, it would be reasonable for the Air Force to consider the claim.

### DECISION

This is in response to the appeal of the U.S. General Accounting Office's (GAO) Claims Settlement Certificate Z-2869514, June 14, 1995, which denied in part a former Air Force member's claim for reimbursement of per diem, lodging expenses, and monetary allowance in lieu of transportation (MALT) incident to his travel for disciplinary actions.

### Background

On June 17, 1993, the Air Force member was authorized temporary duty (TDY) travel for 179 days from Keflavik NAS, Iceland to Tyndall AFB, Florida to stand trial in a disciplinary proceeding against him. The travel authorization stated that he was authorized round trip transportation to stand trial in a disciplinary matter, but it also stated that per diem was authorized in accordance with the JTR. No mode of transportation was noted. The member traveled to Tyndall AFB on June 19. He left there on August 23 when he drove his privately owned vehicle (POV) to Norfolk NAS, Virginia, where he went on leave until his return flight to Iceland on September 4. On August 30, 1993, the travel order was amended to authorize early return (September 3, 1993) and "return airfare (only)." On September 15, 1993, the member was issued another travel order authorizing TDY travel for legal matters to Tyndall AFB for 21 days, including per diem and one-way airfare from Keflavik NAS to Tyndall AFB. Again, no mode of transportation was noted. On September 16, 1993, (after his travel was completed and his voucher was submitted) the original travel order was again amended to indicate that the member was not entitled to per diem expenses in connection with disciplinary action, per Joint Federal Travel Regulation (JFTR), Volume 1, Part O, Paragraph U7450. On the same day, the September 15 travel order also was amended to read the same. The member traveled from Iceland on September 18, arriving in Norfolk, VA. On September 19, 1993, he drove his POV to Tyndall AFB. He remained at Tyndall AFB until October 1, 1993, when he drove his POV to Norfolk NAS.

The member remained in transient facilities at Tyndall AFB during both trips. For the first trip, June through August, his claim for reimbursement submitted on September 10, 1993 included a letter of non-availability. He was reimbursed \$983.50 for lodging and travel-related expenses but was denied reimbursement for per diem. His claim for lodging reimbursement for September to October did not include non-availability documentation. His claim for reimbursement for this lodging period and for mileage between Norfolk NAS and Tyndall AFB were originally denied by the Air

Force. The former member stated that upon completion of the court-martial proceedings, the legal office agreed to pay his lodging and local transportation cost. However, the Air Force did not authorize per diem. On October 5, 1993, the Air Force requested that a pay adjustment authorization totaling \$224 be deducted from the member's pay for the use of transient facilities at Tyndall during the period of September 19, 1993 through October 1, 1993.

By special order #A-462 dated February 7, 1994, the member was ordered from Keflavik NAS, Iceland to the Regional Confinement Facility, Fort Leavenworth, Kansas for confinement.

In his claim to GAO, the former member requested per diem for 64 days (June 19 to August 23) at a rate of \$26 per day totaling \$1,664; lodging expenses for the period September 19, 1993, through October 1, 1993, totaling \$224; and MALT for POV mileage from Tyndall AFB, Florida to Norfolk NAS, Virginia on September 19, 1993 and return travel on October 1, 1993, totaling \$468 for a total reimbursement of \$2,356.

The GAO Settlement Certificate granted his request for reimbursement for the lodging expenses relying on information from the then First Sergeant of the squadron the member was assigned to at Tyndall AFB that the member should have been assigned quarters for this period, but appropriate quarters were not available and he was assigned transient quarters. The Settlement stated that the member may be allowed the cost for oil and gas upon presentation of his receipts for the round trip travel from Virginia, but that payment of MALT or per diem allowances while traveling or while at the disciplinary action point are not authorized.

Upon appeal, the member submits new evidence in support of his claim for per diem. The new evidence is a January 1, 1996, letter from a retired Master sergeant who was the First Sergeant of the squadron the member was assigned to while on TDY. The letter states that as First Sergeant she detailed the member to the Base Education Center where he performed duties from June 19 to August 23.

Also on appeal, the former member requests that the gas and oil awarded be calculated as follows: 942 miles from Tyndall AFB to Norfolk NAS at \$0.19 a mile for a total of \$178.98. Sufficient receipts are unavailable because he was not aware of the requirement to provide them with his claim. No receipts are provided in the record.

### **Discussion**

A member's entitlements under travel orders vest when the travel is performed and the travel orders may not be amended retroactively so as to increase or decrease entitlements under the orders except to correct an error that is clear on the face of the orders. See Senior Airman Darrin L. Converse, USAF, B-270475, June 26, 1996. On the member's June 17th authorization, the purpose of TDY was "(MSN) (other travel) to stand trial" and while an estimated cost of per diem was noted, per diem was authorized "in accordance with [the] JTR." This per diem was not payable and the retroactive travel order which denied authorization for per diem was appropriate to correct the error that was clear on the face of the original travel order. The Comptroller General has long and consistently held that provisions of travel orders which do not conform to applicable statutes and regulations are ineffective and cannot create an otherwise unauthorized entitlement to travel allowances. Warrant Officer John W. Snapp, USMC, 63 Comp. Gen. 4 (1983). We agree with GAO.

On appeal, the member submits evidence that he was assigned to duties while at Tyndall AFB. He argues that his duties warrant the payment of per diem citing Captain Raymond F. Heath, USAF, B-256663, Nov. 9, 1994. We find, however, that the member's travel order contemplated the member's attendance at his disciplinary action, not full-time work as was the purpose of Captain Heath's TDY. Captain Heath traveled initially on TDY to perform military duty. During the TDY, disciplinary action was taken against him. Captain Heath was compensated for pay and allowances for full-time work performed on that TDY and received no allowances for attendance at this trial. See Captain Raymond F. Heath, USAF, supra.

In cases where members traveled on disciplinary travel, per diem has not been allowed. See B-176654, Apr. 11, 1973. In B-170827, Oct. 12, 1970, a member traveled under orders to attend his court martial and was granted reimbursement for the cost of necessary transportation and meal tickets but was denied per diem. The Comptroller General stated that a member's entitlement to travel and per diem was dependent upon a determination that he was performing public business pursuant to competent orders. The member's orders were issued for the purpose of the member's appearance in

court-martial proceedings against him and did not direct or contemplate the performance of military duty at the TDY station.

The travel order in the present case did not direct or contemplate the performance of military duty by the member while at Tyndall. The JFTR makes no distinctions for length of TDY or performance of limited duties pending trial, but denies per diem for members on disciplinary travel. Per diem was appropriately denied by the Air Force.

Concerning the claim for the calculation method for oil and gas, the method suggested is not reasonable. The member is suggesting using a flat rate in lieu of providing receipts for his expenses. The JFTR, Volume I, paragraph U7450 provides reimbursement only for the cost of gas and oil. Thus, the flat rate payment may not be allowed. If the member in this case presented evidence of gas and oil expenses actually expended for his travel between Tyndall AFB and Norfolk NAS in September 1993, it would be reasonable for the Air Force to consider the claim.

### **Conclusion**

We affirm the Settlement denial of per diem. We remand the case to the Air Force for the payment of the oil and gas reimbursement.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Joyce N. Maguire

Member, Claims Appeals Board