

February 19, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 96070230

CLAIMS APPEALS BOARD DECISION

DIGEST

A claimant has the burden of establishing the liability of the government. A member who traveled by privately owned vehicle to undergo medical treatment claims mileage allowances. The Joint Federal Travel Regulations give discretion to military authorities to approve reimbursement for such expenses. The member's claim is denied because he has provided no evidence that reimbursement was approved.

DECISION

A member of the uniformed services claims reimbursement for expenses he incurred when he used his own automobile to travel to and from physical therapy treatments on numerous occasions. The claim was previously submitted to the General Accounting Office (GAO). In GAO Settlement Certificate Z-2867951, dated November 23, 1994, GAO denied the claim on the grounds that the travel was for voluntary rather than required treatment and that reimbursement was therefore not proper. Pursuant to Public Law No. 104-316, October 16, 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 services' members' pay, allowances, travel, transportation, retired pay, and survivor's benefits. The Secretary further delegated that authority to this Office.

Background

The member states that he was severely injured in a skiing accident in 1990 and was ordered to receive frequent physical therapy treatments at a medical facility for approximately 6 months. Because of his duties, he was unable to use the regularly scheduled shuttle service to the medical facility. He states that he received a statement of non-availability of government transportation which he submitted with an earlier claim. Finance personnel lost that statement of non-availability, and his request for a duplicate non-availability statement was denied.

The member made several attempts to settle his claim. The present claim form is dated March 24, 1994. His command denied the claim in 1994 because of lack of the non-availability statement and because no personnel sufficiently familiar with the situation to authorize payment were still stationed there.

Discussion

Under volume 1 of the Joint Federal Travel Regulations (JFTR), paragraph U3500-C, a member who travels to obtain medical care which he has been ordered to obtain is traveling on official business. In the present case, the record contains copies of the member's medical records indicating that he was to undergo physical therapy; it does not contain travel orders ordering him to travel to obtain care.

While we disagree with the reasons GAO gave for denying the member's claim, we agree with the outcome. Volume 1 of JFTR, paragraph U3500-A, states that appropriate officials "may authorize or approve reimbursement for transportation expenses necessarily incurred by members conducting official business in the local area of their permanent or temporary duty station" This indicates that local military authorities have discretion to approve or disapprove reimbursement in situations such as the one before us. The member has the burden of proving that

reimbursement was approved in 1990, and he has not met that burden. See 4 C.F.R. 31.7; Sherwood T. Rodrigues, B-214533, July 23, 1984. He indicates that his request for a car and driver was denied in 1990 for budgetary reasons; and at least since 1994, his command has refused authorization.

Where the JFTR give discretion to military authorities to approve reimbursement, this Office will not allow payment in the absence of such military approval. Cf. Senior Chief Petty Officer John J. Chimento, USN (Retired), B-244598, Oct. 2, 1991. The fact that military authorities approved payment of another claim by the member for mileage allowances is not evidence that they approved payment of the claim before us, because that claim was apparently for travel involving the member's actual duties.

Conclusion

We affirm the settlement.

/s/ _____

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board