

DATE: June 26, 1997

In Re:

[REDACTED]

Claimant

Claims Case No. 96111801

CLAIMS APPEALS BOARD DECISION

DIGEST

A member of the United States Air Force Reserve performing temporary active duty obtained lodging and was paid per diem for days she was in an active duty status. The member rented quarters under a short term lease, which cost the Government less than renting conventional lodgings at a daily rate. The member claims per diem for days on which she was on leave. A member is not entitled to per diem on any day classified as leave or proceed time under the Joint Federal Travel Regulations.

DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 96070147 (September 10, 1996), which denied the claim of a service member for per diem on days classified as leave.

Background

A member of the Air Force Reserve was ordered to active duty at the Drug Enforcement Agency in Arlington, Virginia, starting June 27, 1995, and ending September 22, 1995. From July 8, the member rented lodgings under a short-term lease. The member was reimbursed for lodging for the entire period of the active duty except for six days on which she was in a leave status. The member filed a claim for lodging for those six days.

Discussion

In the Settlement Certificate, we explained that a member is not entitled to per diem on any day classified as leave or proceed time. Volume 1 Joint Federal Travel Regulations (JFTR) paragraph U4102-B. The member has submitted additional documents claiming that the Army routinely pays out claims such as hers and thus her claim should be paid. It appears that the member bases her claim on 1 JFTR para. U4125-A1k(1). That section provides in pertinent part:

"When a member obtains lodging on a weekly or monthly rental basis, the daily lodging cost will be computed by dividing the total lodging cost by the number of days the accommodations are actually occupied, provided the member acts prudently in renting by the week or month, and that the cost to the Government does not exceed the cost of renting conventional lodgings at the daily rate. Otherwise, the daily lodgings cost will be computed by dividing the number of days in the rental period."

Pursuant to that section, if a member obtains lodgings on a weekly or monthly rental basis, the member is acting prudently in renting by the week or month and the cost to the Government does not exceed the cost of renting conventional lodgings at daily rate, the member may receive a higher per diem rate. The weekly or month rental fee is divided by the number of days the member actually occupies the lodgings in an active duty status rather than the number of days in the rental period. For example if a member was ordered to TDY for 24 days, and rented an apartment for the full 30 days of the month, and the rent for the full month was \$300, the \$300 would be divided by the 24 days he actually occupied the lodgings (\$12.50 per night) rather than the 30 days of the rental period (\$10.00 per night). Assuming the cost of renting conventional lodgings at a daily rate was \$25 per day and the member acted prudently, the member would be reimbursed for his lodgings at the rate of \$12.50 per night. This allows the member to save the government money, but allows payment to the member to cover the actual cost of his lodgings. If the member took

leave for 2 days during the days he was actually in a TDY status, he would have been reimbursed \$12.50 per night for 22 days, rather than 24 days. He would not be paid per diem for the days he was in a leave status.

The claimant apparently has been led to believe this provision should reimburse the member for the entire amount paid for the rental period including days when she was on leave. It is our view that paragraph U4125 does not provide lodging expenses for a member when she is in a leave status. Such an interpretation of paragraph U4125 would be inconsistent with 1 JFTR U4102-B, and render it meaningless. It is our view that this was not the intent of U4125. There is no indication that the Services intended to eliminate U4102-B; to the contrary, we have been informally advised that our interpretation is consistent with the way the regulations have been interpreted by DFAS.

The rate for per diem is properly set under U4125 when the rent is divided by the number of days when the member is in an active status and occupying the lodgings. It appears that this was done in the present case. DFAS correctly excluded the days when the member was in a leave status, and paid her for the days she was on active duty. It appears that the member was fully reimbursed for the days she was actually occupying the lodgings in an active status. Thus, we conclude that the member is not entitled to further per diem.

The member presents evidence that others in similar circumstances may have been erroneously paid per diem for days when they were in a leave status. However, the Comptroller General has long held that even if other members are erroneously paid under identical circumstances, it does not provide a basis for payment of the present claim. Billy M. Nims,

SP-6, B-167706, Sept. 29, 1969.

Conclusion

Accordingly, we affirm the Settlement Certificate.

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

_____/s/_____

Joyce N. Maguire

Member, Claims Appeals Board