

DATE: May 13, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97011319

CLAIMS APPEALS BOARD DECISION

DIGEST

A member of the Army National Guard performed several periods of Active Duty for Special Work. He commuted daily from his home to his duty station. Except to the limited extent allowed under paragraph U7150 of volume 1 of the Joint Federal Travel Regulations, his claim for reimbursement of mileage and other commuting expenses is denied because a member who commutes to his duty station daily is generally not entitled to travel and transportation allowances.

DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 96102802 (January 6, 1997), in which we denied the claim of an Army National Guard member for travel and transportation allowances for various periods of active duty between August 1991 and September 1994.

Background

The record indicates that the member was ordered to a series of periods of Active Duty for Special Work (ADSW) in one of three duty stations in New Jersey. All the orders directed the use of the member's own vehicle; one order indicated that the use of his vehicle was to be at no cost to the government. During all the periods of ADSW, the member commuted daily from his home to his duty station. In our Settlement, we said that the member was entitled to allowances for one round-trip for each of five periods of ADSW of less than 20 weeks. For the last of those, he was entitled to up to two meals per period of ADSW if otherwise correct. We said that he was also entitled to one one-way trip from his home to his duty station for each of three periods of ADSW which were over 20 weeks in duration. For the trips for which mileage was allowed, we also allowed reimbursement for bridge, road, and tunnel tolls the member actually paid. The member argues that he is entitled to reimbursement for all mileage, tolls, and other expenses for his daily commute because he was directed to commute and was not provided quarters or subsistence.

Discussion

Under 37 U.S.C. 404(a)(4) a member of the Army National Guard is entitled to travel and transportation allowances for travel performed under orders "when away from home." The relevant implementing regulation is paragraph U7150 of volume 1 of the Joint Federal Travel Regulations (JFTR).

In our Settlement Certificate, we discussed the precise application of portions of paragraph U7150 to the member's claim. The portions of paragraph U7150 which pertain to the member's claim have been in effect since before he began the ADSW in 1991. See 1 JFTR para. U7150 (Change 53, ay 1, 1991). We find no error in the Settlement.

The member argues that he should be reimbursed because he was ordered to commute to the ADSW sites. The Comptroller General dealt with a similar situation in Specialist Michael Crocco, B-265609, Jan. 25, 1996. In that case, the member was a reservist called to active duty during Desert Shield/Storm. He commuted to a site approximately 48 miles from his home and was assured by his commander that he would be reimbursed for his expenses. The Comptroller General denied his claim under 1 JFTR para. U7150. The fact that the member's commander told him that he would be reimbursed did not provide a basis for payment, since the government is not liable for the erroneous information given by its officers, agents, or employees.

We note that under certain circumstances designated officials can authorize reimbursement of travel expenses for travel within a local commuting area. See Chapter 3, Part F of 1 JFTR. No such authorization was apparently given with regard to the member's claim. Where discretion is given to military authorities to approve reimbursement, this Office will not allow payment in the absence of such military approval. DOHA Claims Case No. 96070230 (February 19, 1997).

Conclusion

We affirm the Settlement.

_/s/ _____

Christine M. Kopocis

Member, Claims Appeals Board

_/s/ _____

Joyce N. Maguire

Member, Claims Appeals Board

_/s/ _____

Jean E. Smallin

Member, Claims Appeals Board