

Date: June 26, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97020601

CLAIMS APPEALS BOARD DECISION

DIGEST

A member purchased airplane tickets for a permanent change of station move in reliance on information that he would be reimbursed. Reimbursement was not proper because the member did not purchase the tickets from a travel agency under government contract or other approved facility, but the member received two erroneous payments in partial reimbursement. The Service determined that the member was in debt in the amount of the partial reimbursement. The member may not receive further reimbursement, but collection of the erroneous payments he received may be waived.

DECISION

This is in response to a claim for reimbursement for the cost of airplane tickets which an Army member purchased for himself and his dependents incident to a permanent change of station (PCS) move. Pursuant to Public Law No. 104-316, October 19, 1996, section 3702 of title 31 of the United States Code, which provides for the settlement of claims, 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. Also pursuant to Pub. L. No. 104-316, the authority of the Comptroller General to waive a claim of the United States against a person arising out of an erroneous payment of pay or allowances, including travel, transportation, or relocation expenses was transferred to the Director, Office of Management and Budget (OMB). The Director of OMB delegated his waiver authority involving all uniformed service members and civilian employees of the Department of Defense to the Secretary of Defense. This Office exercises the waiver authority of the Secretary.

Background

Under orders dated April 12, 1996, the member was transferred from Fort Bragg, North Carolina, to Schofield Barracks, Hawaii. Incident to his PCS, he was advised to purchase tickets to Hawaii for himself and his dependents. In accordance with that advice, the member purchased four tickets at a total cost of \$4,092. When he requested reimbursement after he arrived in Hawaii, he was initially reimbursed for the tickets in the amount of \$1,179. He filed another request and received another \$1,236, for a total reimbursement of \$2,415. He now claims the balance of the cost of the tickets, \$1,677.

Volume 1 of the Joint Federal Travel Regulations (JFTR), paragraph U3120-A requires service members to purchase tickets through travel offices under government contract, in-house travel offices, or General Services Administration Travel Management Centers unless they can demonstrate that they had no alternative but to purchase them elsewhere. If they do not comply with this requirement, reimbursement is not authorized. The member was not advised of that requirement and did not use any of those facilities. Because he did not use any of those facilities and did not demonstrate that he could not have done so, the Army has determined that he must repay the \$2,415 he has received as reimbursement, but has suspended collection pending our decision.

Discussion

As discussed above, 1 JFTR para. U3120-A requires that a member use one of the three ticketing facilities listed above if he is to be reimbursed for tickets he purchases himself, unless he can demonstrate that he could not use any of those facilities. [\(U\)](#) There is no indication in the record that the member could not have used one of the required facilities.

There is a rule of long standing that the government is not liable for the erroneous or negligent actions of its officers, agents, or employees. DOHA Claims Case No. 97012101 (February 6, 1997); Petty Officer John R. Blaylock, 60 Comp. Gen. 257 (1981). A member's entitlement to pay and allowances is based on applicable statutes and on regulations such as the JFTR which have the force of law. We must apply those statutes and regulations in our decisions. Incorrect information provided by a government officer, agent, or employee cannot change a member's entitlements. In this case, the failure of a government employee to inform the member that he must purchase tickets at a specified ticket facility does not provide a basis for reimbursement when the member does not use a proper facility. Therefore, the member cannot be reimbursed for the tickets he purchased, and his claim for further reimbursement must be denied.

In the case before us, the member has already been partially reimbursed for the tickets. Since the member should not have been reimbursed, the two reimbursement payments he received were erroneous, and we may consider them for waiver under 10 U.S.C. 2774. Under that statute, we may waive collection of erroneous payments of pay and allowances made to a member or former member if collection would be against equity and good conscience and not in the best interest of the United States. Waiver cannot be granted if there is any indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or former member.

It is our view that the member meets the standards required for waiver in this instance. The record contains documentation that the member was advised in a formal briefing to purchase the tickets and seek reimbursement; he was not told of the requirement that tickets be purchased at one of the ticket facilities specified in 1 JFTR para. U3120-A, which is a relatively new provision. He was not aware of the provision and had no reason to question the information he received in the briefing. He relied on the information he received regarding the purchase of tickets. Expecting to be reimbursed, he acted in good faith and without fault when he received the two payments in partial reimbursement. See Drs. Michael H. Mattei and Loren T. Wilkenfeld, B-261483 and B-265864.2, Aug. 29, 1996.

Conclusion

We deny the member's reimbursement claim, but we waive collection of the partial reimbursement which the member has already received.

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Joyce N. Maguire

Member, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

1. For transoceanic travel, if government transportation or government-procured transportation is available and the member chooses to travel by common carrier at personnel expense, reimbursement--if otherwise proper--is limited to the amount which the Service would have paid for the transportation. See 1 JFTR para. U3110-D1. It appears that the \$2,415 which the member has already received is approximately the Government Transportation Request rate for the tickets he purchased. Therefore, if reimbursement could be allowed, it would be limited to that amount.