

DATE: July 30, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97030601

CLAIMS APPEALS BOARD DECISION

DIGEST

A member who traveled to a temporary duty assignment did not purchase airline tickets from a travel agency under government contract or other approved facility. Reimbursement is not proper because paragraph U3120-A of volume 1 of the Joint Federal Travel Regulations requires that a member purchase tickets from one of those facilities unless he can demonstrate that he had no alternative but to purchase his tickets elsewhere. The record contains no such demonstration.

DECISION

This is in response to an appeal of Claims Settlement, DOHA Claim No. 96123011, February 24, 1997, which denied the claim of an officer in the United States Air Force Reserve for reimbursement for airplane tickets which he purchased pursuant to Temporary Duty (TDY) orders.

Background

Under orders dated March 22, 1996, the member was directed to perform two days of TDY at Kirtland Air Force Base, New Mexico, in April 1996. He purchased tickets for \$222 for round-trip air travel between Los Angeles, California, and Albuquerque, New Mexico. His reimbursement claim was denied by Air Force Reserve authorities because he used a commercial travel office (CTO) not under contract with the government and did not demonstrate that he had no alternative. In our Settlement Certificate we likewise denied the member's claim. The member argues that he had always purchased his tickets in the same way and was unaware of the change in the regulations. He states that he bases his claim on paragraph M2204 of the Joint Travel Regulations (JTR), which allowed limited reimbursement to a member who purchased tickets from a travel agent.⁽¹⁾ Officials at the Defense Finance and Accounting Service (DFAS) ask whether payment is proper under 37 U.S.C. 404 based on a Comptroller General decision, Dr. Kenneth J. Bart, USPHS, 58 Comp. Gen. 710 (1979).

Discussion

Paragraph U3120-A of volume 1 of the Joint Federal Travel Regulations (JFTR) provides that a member is authorized to arrange official travel through a CTO under contract to his organization, an in-house travel office, or a General Services Administration Travel Management Center. A member who arranges domestic travel through a CTO not under government contract is not authorized reimbursement unless he can demonstrate that he had no alternative. This provision took effect January 1, 1995 (change 97, dated January 1, 1995). Prior to that date, it was the policy of the Services that tickets be purchased directly from airline companies, but a member could also use a CTO under government contract. Under the JFTR in effect prior to January 1, 1995, a Service member was to use a CTO not under government contract only in limited circumstances, but if he was unaware of this policy and purchased tickets from a non-contract CTO, he could be reimbursed up to the cost of tickets purchased through an airline company. In such cases he was to be advised that recurring use of non-contract CTOs would result in denial of reimbursement unless he could demonstrate that he had no alternative. See 1 JFTR para. U3120 (change 91, dated July 1, 1994).

For travel claims, we must base our decisions on the law and implementing regulations applicable to the situation at

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hand--in this case, the relevant portions of the JFTR in effect at the time that the member traveled. See DOHA Claims Case No. 96123013 (June 2, 1997). Under 1 JFTR para. 3120-A, a member is not authorized reimbursement if he does not use one of the facilities in paragraph U3120-A unless he can demonstrate that he had no alternative. In the present situation, the member has not demonstrated that he had no alternative but to use a non-contract CTO, and the record indicates that he lives 22 miles from one military facility where one of the proper CTOs would have been available and 31 miles from another. The fact that the member states that he had previously purchased tickets from a non-contract CTO and been reimbursed and was unaware that the regulations had changed does not provide a basis for payment in violation of the JFTR. The fact that the member was not properly advised concerning reimbursement does not provide a basis for payment, since the government is not liable for the erroneous or negligent acts of its agents, officers, or employees. Petty Officer John R. Blaylock, 60 Comp. Gen. 257 (1981).

Paragraph M2204 of the JTR, which the member cites in support of his claim, became part of 1 JFTR para. U3120 when the JFTR superseded the JTR. As noted above, that provision allowed reimbursement in certain limited circumstances. However, that provision was deleted when the current paragraph U3120-A became effective on January 1, 1995. Thus, it was not in effect when the member traveled in April 1996. Likewise, the 1979 Comptroller General decision cited by DFAS allowed reimbursement because the JFTR allowed reimbursement at that time. Reimbursement of the member in the present situation is not authorized because the JFTR does not authorize it.

Conclusion

We affirm the Settlement Certificate.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board

1. At the time the regulation was in effect, members were required to purchase tickets directly from airlines. Members who were unaware of that requirement and used a CTO could be reimbursed up to what the tickets would have cost if purchased from an airline company.

2. The statute which governs travel and transportation allowances in general, 37 U.S.C. 404, does not explicitly provide an answer to the question before us--*i.e.*, whether the member can be reimbursed in the present circumstances. The answer to that question is found in the JFTR, which, as an implementing regulation, has the force of law.