

DATE: September 16, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97031010

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 tickets elsewhere. The record contains no such demonstration.

DECISION

This is in response to an appeal of Claims Settlement, DOHA Claim No. 96123008, February 21, 1997, which denied the claim of an officer in the United States Air Force Reserve (USAFR) for reimbursement for airline tickets which he purchased pursuant to Temporary Duty (TDY) orders.

Background

Under orders dated April 4, 1996, the member was directed to perform two days of TDY in Streamwood, Illinois. He purchased airline tickets for \$195.72 for round-trip travel between Houston, Texas, and Chicago, Illinois. His reimbursement claim was denied by USAFR authorities because he purchased the tickets from a commercial travel office (CTO) which was not under government contract, and he did not demonstrate that he had no alternative. In our Settlement Certificate, we likewise denied the member's claim. The member argues that he should be reimbursed because he was unaware of the requirement that he purchase tickets through an approved facility and was unaware of the existence of such a facility in the Houston area. He notes that the facility is fifty miles from his home. In support of his claim, he cites paragraph M2204 of the Joint Travel Regulations (JTR), which allowed limited reimbursement to a member who purchased tickets from a travel agent.⁽¹⁾ Additionally, 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 government contract to his organization, an in-house travel office (such as the SATO referred to by the member), 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 under 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). This policy of at least partial reimbursement for a member who did not purchase tickets in accordance with the JFTR ceased as of January 1, 1995.

When a member makes a claim, the government's liability is limited to that provided by the relevant law and regulations. For travel claims, we must base our decisions on the law and implementing regulations applicable to the situation at hand--in this case, the relevant portions of the JFTR in effect at the time the member traveled.⁽²⁾ See DOHA Claims Case No. 96123013 (June 2, 1997). Under 1 JFTR para. U3120-A, a member is not authorized reimbursement if he does not use one of the facilities listed 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. The fact that the member was not advised to use an approved facility does not provide a basis for payment, since the government is not liable for the erroneous or negligent actions of its officers, agents, or employees. See Petty Officer John R. Blaylock, 60 Comp. Gen. 257 (1981). The fact that the member was unaware that the regulations had changed does not provide a basis for payment. The existence of an approved facility was ascertainable. While the member points out that the facility was fifty miles away, both the member's home and the facility appear to be within the same local commuting area.⁽³⁾

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 regulation 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 Appeal 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 the 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.

3. While we do not find the distance involved to be prohibitive, we note that the member might very well have been able to communicate and transact his business with the facility without actually visiting it--*e.g.*, by faxing his orders.