

DATE: August 26, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97041006

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. 96123007, February 21, 1997, which denied the claim of an officer in the United States Air Force Reserve for reimbursement for airline tickets which he purchased pursuant to Temporary Duty (TDY) orders.

Background

Under orders dated April 8, 1996, the member was directed to perform five days of TDY at Phoenix, Arizona, beginning April 24, 1996. He purchased airline tickets for \$244 for travel between Milwaukee, Wisconsin, and Phoenix. His reimbursement claim was denied by Air Force Reserve 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 use an approved facility and because his orders arrived so late that he might not have been able to obtain seats if he had waited to use an approved facility. 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, 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 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.⁽¹⁾ See DOHA Claims Case No. 96123013 (June 2, 1997). Under 1 JFTR para. U3120-A, a member is not authorized reimbursement for domestic transportation expenses if he does not use one of the facilities in paragraph U3120-A unless he can demonstrate that he had no alternative but to use a non-contract CTO, and the record indicates that an approved facility was available in Milwaukee. 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 negligent or erroneous actions of its officers, agents, or employees. See Petty Officer John R. Blaylock, 60 Comp. Gen. 257 (1981). While the member states that his orders did not arrive until April 22, 1996, and that he was afraid that he would not be able to obtain seats if he waited until that date to purchase tickets, he has not shown that he made any attempt to use an approved facility. He has not demonstrated that he had no

alternative but to use a non-contract CTO. The member's orders stated that reimbursement would be limited to "Constructive Cost of Travel," and that the cost of a Transportation Request (TR) was \$473. Even though the member's tickets cost less than a TR, he cannot be reimbursed because he did not purchase them from an approved facility and did not demonstrate that he had no alternative. See DOHA Claims Case No. 97041009 (July 30, 1997).

The 1979 Comptroller General decision cited by DFAS does not provide a basis for payment, since the provision in the Joint Travel Regulations (JTR) under which payment was authorized is no longer in force and was not in force when the member traveled.⁽²⁾

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. 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.

2. The JFTR superseded the JTR.