

Date: August 22, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97041007

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. 96123009, February 24, 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 January 22, 1996, the member was directed to perform two days of TDY at Maxwell Air Force Base, Alabama. He purchased airline tickets for \$188 for travel between Tulsa, Oklahoma, and Montgomery, Alabama, with return via San Antonio, Texas, for Inactive Duty Training.⁽¹⁾ 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. 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). Before 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 before 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.

For travel claims, we must base our decisions on the law and implementing regulations applicable to the situation at ⁽²⁾

hand--in this case, the relevant portions of the JFTR in effect when the member traveled. 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. Here, the member has not demonstrated that he had no alternative but to use a non-contract CTO, and the record indicates that an approved facility was available in Tulsa. 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 \$550. 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. DOHA Claims Case No. 97041009 (July 30, 1997).

The 1979 Comptroller General decision cited by DFAS does not provide a basis for payment. 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.⁽³⁾

Conclusion

We affirm the Settlement Certificate.

/s/ _____

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Michael H. Leonard

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board

1. The member states that a round trip from Tulsa to Montgomery to Tulsa would have cost the same amount as the fare from Tulsa to Montgomery to San Antonio.

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. The JFTR superseded the JTR.