

DATE: January 12, 1998

In Re:

[Redacted]

Claimant

Claims Case No. 97110305

CLAIMS APPEALS BOARD DECISION

DIGEST

Members traveling under permissive Temporary Duty (TDY) orders were erroneously advised that they were entitled to Temporary Lodging Expense (TLE). Payment of TLE is not appropriate for members in their situation, and members on permissive TDY are not entitled to be reimbursed for travel expenses. Erroneous information does not provide a basis for payment of allowances, since the government is not liable for erroneous information provided by its officers, agents, and employees.

DECISION

We have been asked to render a decision regarding the entitlement of a husband and wife who are both Air Force members for Temporary Lodging Expense (TLE) in the circumstances set out below. [\(1\)](#) Under 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 against the United States, was amended to provide that the Secretary of Defense shall settle claims involving uniformed service members' pay and allowances, including travel allowances. The Secretary further delegated that authority to this Office.

Background

Pursuant to a Permanent Change of Station (PCS) from Kelly, Air Force Base, Texas, to Dyess Air Force Base, Texas, the members were granted permissive Temporary Duty (TDY) for a house-hunting trip. They indicate that personnel at Kelly advised them that they would be entitled to TLE while staying in transient quarters at Dyess pursuant to paragraph U5705 of volume 1 of the Joint Federal Travel Regulations (JFTR). When they claimed the TLE at Dyess after they completed their PCS, the claim was denied.

Discussion

The purpose of TLE is to reimburse a member at least in part for lodging and meal expenses he incurs while he is without a permanent residence during a PCS move in CONUS. Paragraph U5705 of 1 JFTR states that TLE is payable for a limited number of days before departure from the old Permanent Duty Station (PDS) and/or after arrival at the new PDS when per diem is not otherwise payable. Payment of TLE before departure from the old PDS would be proper (within the limits imposed by the JFTR) in a situation in which the member has moved out of his permanent residence at his old duty station incident to a PCS and has moved into transient quarters there for a short period before he actually signs out.

When a member is on permissive TDY, he is traveling primarily for his own benefit, rather than the government's, and therefore may not receive per diem or travel expenses. See Ensign Cheryl R. Dallman, USNR, and Ensign Linda J. Brake, USNR, 64 Comp. Gen. 489 (1985); and Captain William H. Runge, USNR, B-227504, Oct. 27, 1988.

A member's pay and allowances are governed by the applicable statutes and regulations. Therefore, erroneous information supplied by government officers, agents, or employees cannot serve as a basis for payment of pay or allowances in excess of a member's entitlements. See Staff Sergeant Daniel J. Scott, USAF, B-191813, July 6, 1978.

In the situation before us, the members were on permissive TDY looking for a house to live in when they moved to their new duty station. There is no indication in the record that they had moved out of their permanent residence at their old duty station. Paragraph U5705 of 1 JFTR was not intended to cover members in their situation. Payment of TLE would not be proper because they were traveling for their own convenience, not the government's. Moreover, payment of TLE to them would conflict with the permissive nature of their TDY orders, since members on permissive TDY are not entitled to per diem or travel expenses. See Ensign Cheryl R. Dallman, USNR, 64 Comp. Gen. at 492. While it is unfortunate that the members were misinformed regarding payment of TLE, that does not provide a basis for payment, since the government is not liable for the erroneous acts of its officers, agents, or employees. See Staff Sergeant Daniel J. Scott, B-191813, supra.

Conclusion

The claim is denied.

_____/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 Claims Appeals Board has decided to render a decision on this matter for administrative reasons.