

December 12, 1997

In Re:

[Redacted]

Claimant

Claims Case No. 97111901

CLAIMS APPEALS BOARD DECISION

DIGEST

The proper application of the leave laws, 10 U.S.C. §§ 701 and 704, for members of the Armed Forces with regard to the accounting for leave is considered an administrative matter over which the military has broad discretion. This Office will generally not question a leave classification.

DECISION

This is in response to an appeal of Settlement Certificate No. 97090811, November 6, 1997, which denied the claim of a member for cancellation of leave charged for January 25, 1997, and for payment of per diem for that day.

Background

Under travel orders issued on January 21, 1997, the member traveled from Kunsan Air Base, Korea, to Bolling Air Force Base, DC, for five days of temporary duty (TDY) including travel time. She departed from Korea on January 23, 1997. After crossing the International Date Line, she arrived at her destination on January 23 and checked into a commercial motel on that date and remained a guest there until February 1. The member states that the class she attended began January 27 at 6:30 AM. The member filed a travel voucher claiming her lodging expenses for seven nights from January 25 through February 1. Air Force authorities paid for six of those nights and charged her for leave for January 25. The member argues that January 25 should have been classified as a travel day and that her travel claim for lodging for that night should therefore have been paid. She contends that she is entitled to two days of travel time under these circumstances. On April 3, 1997, the Air Force attempted to change the member's orders to make January 25 a travel day. Finance officials refused to accept the change on the grounds that except in limited circumstances travel orders cannot be modified after the travel has been performed, and that the constructive travel applied was correct. ⁽¹⁾ In the Settlement Certificate, we denied the claim because the classification of days as leave is a matter which by statute is left to the discretion of the appropriate Service Secretary.

Discussion

Leave accrued by and charged to service members is governed by Chapter 40 of title 10 of the United States Code. In particular, 10 U.S.C. § 704 states that the use of leave by members is governed by regulations prescribed by the appropriate Service Secretary or his designated representative. Matters such as the use of leave by military members are personnel matters in which the military departments have broad discretion. See DOHA Claims Case No. 97040301 (Oct. 28, 1997); and Senior Chief Petty Officer John J. Chiumento, USN (Retired), B-244598, Oct. 2, 1991. See also Jamison v. Stetson, 471 F. Supp. 48, 52 (N.D.N.Y. 1978).

The member contends that her claim should be allowed under Lieutenant Colonel Wesley B. Collins, USAF, B-189776, Nov. 23, 1977, the Comptroller General decision cited in the Settlement Certificate. That decision was cited for the principle that the military has broad discretion in the classification of service time as travel time or leave. The Comptroller General stated that calculation of leave time is a personnel matter over which the military has broad discretion, but that he would not object to the reclassification of one of the member's leave days as a travel day or to the

resulting payment of per diem for that day. We concur as regards the present situation. The calculation of the member's leave is a matter for military discretion which we will not question, but we would not object if the Air Force chose to reclassify a day of the member's leave as travel time and pay her allowable expenses for that day.⁽²⁾ We note that two days of travel does not seem unreasonable in light of the distance traveled and the time difference.⁽³⁾

Conclusion

We affirm the Settlement Certificate, but we would not object if the Air Force chose to reclassify a day of the member's leave as travel time and pay her allowable expenses for that day.

_____/s/_____

Christine M. Kopocis

Acting Chairman, Claims Appeals Board

_____/s/_____

Michael H. Leonard

Member, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

1. See 51 Comp. Gen. 736 (1972). Travel Orders can generally be modified to increase entitlements after the travel has been performed only to correct an obvious error or to complete the orders to show their original intent.

2. If processing the member's travel voucher to pay the additional travel expense would require modification of her travel orders, it is our view that retroactive modification is permitted in this situation to correct an error or to carry out the original intent of the orders.

3. See, e.g., volume 1 of the Joint Federal Travel Regulations, paragraph U4325C.