

DATE: March 11, 1998

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In Re:

[Redacted]

Claimant

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Claims Case No. 97122317

## CLAIMS APPEALS BOARD DECISION

### DIGEST

The proper application of 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 calculation in the absence of evidence of clear error.

### DECISION

We have been asked to render a decision regarding the claim of an Air Force officer for restoration of four leave days charged to him on account of excess travel time.<sup>(1)</sup> 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, was amended to provide that the Secretary of Defense shall settle claims involving service members, including travel claims. The Secretary further delegated that authority to this Office.

#### Background

The member attended Commissioned Officer Training at Maxwell Air Force Base (AFB), Alabama, and was then assigned to Little Rock AFB, Arkansas. His travel orders stated that he was authorized to be absent from duty for six days to fly to his home of record in California to pick up his automobile and drive to Arkansas. When he arrived in Arkansas, financial authorities determined that under paragraph U5160-B1 of volume 1 of the Joint Federal Travel Regulations (JFTR) the member was entitled to only two days of constructive travel time to drive from Alabama to his duty station in Arkansas. Since the member's decision to go to California to pick up his car and drive with his wife to Arkansas was determined to be a matter of personal convenience and since the constructive travel time for travel between Alabama and Arkansas amounted to two days, his travel time in excess of two days was charged as leave. He claims restoration of the four days of leave.

#### Discussion

Leave accrued by and charged 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 leave charged to military members are personnel matters in which the military departments have broad discretion. See DOHA Claims Case No. 97111901 (December 12, 1997); Lieutenant Colonel Wesley B. Collins, USAF, B-189776, Nov. 23, 1977. See also Jamison v. Stetson, 471 F. Supp. 48, 52 (N.D.N.Y. 1978).

Because the law gives broad discretion to the Service Secretaries to make determinations in administrative matters such as the calculation of leave, this Office will not question the Air Force's calculation of the member's leave in the present situation in the absence of evidence of clear error. We see no evidence of error in the current calculation.<sup>(2)</sup>

While we will not question the Air Force's calculation of the member's leave, it appears that the member was misinformed regarding his travel entitlements and the amount of leave that his travel would entail. We note that

erroneous information does not provide a basis for allowing a claim, since there is a long-standing principle that the government is not bound by the negligent or erroneous acts of its officers, agents, or employees. See DOHA Claims Case No. 97110304 (January 12, 1998); DOHA Claims Case No. 97110305 (January 12, 1998); Petty Officer John R. Blaylock, USN, 60 Comp. Gen. 257 (1981). The government is not bound by such acts because a member's entitlements are governed by the applicable laws and regulations. Reclassification of the member's leave would violate the JFTR and would result in payments beyond his travel entitlements.

### **Conclusion**

The member's claim for restoration of leave time 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.
2. Travel to the member's new duty station by the most direct route was calculated under 1 JFTR para. U5160-B1 to take two days. Since travel to pick up the member's car and drive it to his duty station was considered a matter of personal convenience, the additional four days were charged as leave. Under 1 JFTR para. U5413, travel in such a situation is reimbursable only in connection with shipment of a car to or from a duty station outside the continental United States. Where there is circuitous travel [travel by a route other than the one that would normally be prescribed by a transportation officer between the places involved. See 1 JFTR App. A], the leave charged to the member must be based on the constructive travel itinerary for the most direct route which could have been used. See B-189776, supra.