

July 16, 1998

In Re:

[Redacted]

Claimant

)

Claims Case No. 98031809

CLAIMS APPEALS BOARD DECISION

DIGEST

A member was transferred from Oslo, Norway, to Bahrain and was entitled to constructive transportation of his dependents between those points. Under paragraph U5116-D1 of Volume 1 of the Joint Federal Travel Regulations, his reimbursement is limited to the rate the sponsoring Service would have been required to pay for the transportation.

DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 97101418, January 14, 1998, which denied the claim of an Air Force member for reimbursement of an additional \$1,679.02 in airfare for his dependants' travel incident to a PCS.

Background

Under orders dated July 24, 1994, the member was transferred from Oslo, Norway, to Bahrain. The orders were amended to provide for concurrent Permanent Change of Station (PCS) travel of his dependents. The member was ordered to perform temporary duty in the United States en route to his new permanent duty station. Although his wife and son traveled to the United States as well, the member was entitled to reimbursement only for their constructive travel between Oslo and Bahrain at the most economical fare available. Since a travel agent determined that the lowest fare for the constructive travel of the member's dependents to be \$1,920.85, he claimed \$3,841.70 for their air travel upon completion of his PCS. The member reduced his claim to \$3,704.28 when the Bureau of Naval Personnel (BUPERS) determined that the lowest fare at the time of the dependents' travel was \$1,852.14. The Defense Finance and Accounting Service (DFAS) reimbursed the member in the amount of \$2,025.26 when the Transportation Management Office at Ramstein Air Base indicated that the lowest fare was \$1,012.63. The member claims \$1,679.02, the difference between BUPERS' and DFAS' rates for two tickets. DFAS contends that its payment was correct and that no data exists in 1998 to verify 1994 airfares.

Discussion

This Office must render decisions accordance with the applicable statutes and regulations. See DOHA Claims Case No. 96123013 (June 2, 1997). Claims are based on the written record as established by the agency involved and by evidence submitted by the claimant. The burden is on the claimant to establish the liability of the government. See 4 C.F.R. § 31.77. [\(U\)](#)

It is undisputed that under volume 1 of the Joint Federal Travel Regulations (JFTR), paragraph U5116-D1, the member is entitled to reimbursement for constructive air travel by his dependents at a rate not to exceed the lowest fare available for the proper route at the time of the travel. The issue before us is the correct amount for reimbursement. The length of time that has passed makes such information difficult to obtain. In view of the conflicting information in the record regarding the lowest fare, this Office contacted the Office of Transportation Audits at the General Services Agency (GSA), the unit exercising the authority under 31 U.S.C. § 3726 for the audit of government transportation. GSA

advised us that the lowest available airfare from Oslo to Bahrain at the time in question was \$1,707.31. In our view, this figure is dispositive of the issue, since DFAS is unable to verify its earlier airfare determination at this time and since GSA is statutorily required to maintain the information at issue here.⁽²⁾ Therefore, the member's reimbursement for two tickets is limited to \$3,414.62 minus the \$2,025.26 he has already received, or \$1,389.86, which is the maximum allowable under the JFTR.

Conclusion

We allow the member's claim in the amount of \$1,389.86.

/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. In the Settlement Certificate, DOHA Claims Case No. 97101714, supra, the evidence before the adjudicator consisted of two airfare rates, one from DFAS and one the claimant obtained from BUPERS. Since the claimant did not demonstrate that his rate was more accurate than DFAS's, he did not meet his burden of proof, and the adjudicator accepted DFAS's rate. For the reasons noted infra, we contacted the agency with the statutory responsibility to maintain airfare records for the government in order to ascertain the correct fare.

2. We take official notice of the \$1,707.31 fare, since it is an adjudicative fact which is not subject to reasonable dispute and is capable of ready determination by resort to an unquestionably accurate source. Compare Fed. R. Evid. 201(c). Also compare 4 Jacob A. Stern et al. Administrative Law § 25.01: "The principle of official notice permits an agency to take cognizance of facts similar to those of which a court could take judicial notice. Additionally, administrative agencies are permitted to take notice of generalized facts within their areas of expertise."