

January 14, 1998 [sic 1999]

In Re:

[Redacted]

Claimant

)

Claims Case No. 98120402

CLAIMS APPEALS BOARD DECISION

DIGEST

If an Air Force member is to be reimbursed for personal procurement of transoceanic airline tickets, Air Force Instruction 65-103 requires that specific authorization to do so be included in his orders. A military member without that authorization in his orders, purchased tickets to Uzbekistan for a temporary duty assignment there. In contravention of paragraph U3120-A of volume I of the Joint Federal Travel Regulations, he purchased the tickets through a commercial travel office which was not under government contract. Therefore, he may not be reimbursed for the tickets.

DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 98072715, September 24, 1998, which denied the claim of an Air Force member for reimbursement for airplane tickets he purchased for official travel.

Background

Pursuant to orders directing him to perform temporary duty in Uzbekistan in May 1998, the member purchased tickets from Pensacola, Florida, to Tashkent, Uzbekistan, on Turkish Airlines from a commercial travel office. The member flew from Florida to New York on Delta Airlines and from New York to Istanbul, Turkey, to Uzbekistan on Turkish Airlines. The tickets cost \$1,559.00. According to the member's orders, he was not directed to use government-procured transportation, but was not authorized to procure transportation personally. The member states that he was advised that because his orders did not require the use of government-procured transportation he was authorized to procure tickets himself. The Settlement denied the member's claim because he procured the tickets himself and did not use an approved entity to make the purchase and because he violated the so-called "Fly America" Act by utilizing a non-U.S. carrier without providing the necessary certification of nonavailability of an American carrier. In response to the Settlement, the member now provides certification of nonavailability of an American carrier as well as a letter from the Commandant of his school which supports his personal procurement of tickets.

Discussion

For an Air Force member to be reimbursed for transoceanic travel, his orders must specifically state that he is authorized to procure his transportation personally. *See* Air Force Instruction (AFI) 65-103, paragraph 3.3.16. Moreover, 1 JFTR para. U3120-A requires that a member who purchases tickets for official travel do so through a commercial travel office under contract to the government, an in-house travel office, or a General Services Administration Travel Management Center. Paragraph U3120-A states that a member who uses a commercial travel office not under government contract is not to be reimbursed unless he can demonstrate that he had no alternative. The Fly America Act, Pub. L. No. 103-272, 108 Stat. 1116-1117, *codified at* 49 U.S.C. § 40118 (1994), [\(U\)](#) prohibits reimbursement of a member who purchases tickets on a non-U.S. airline unless certain nonavailability requirements are met.

One of the grounds on which our Settlement denied the member's reimbursement claim was that the member's purchase of his tickets from Turkish Airlines violated the Fly America Act, *supra*. Paragraph U3125-C6 of Volume 1 of the Joint

Federal Travel Regulations (JFTR) states that the statute can be satisfied by a certification that a U.S.-flag carrier was not available. The member has certified, and this Office has verified, that no U.S.-flag carrier serves Uzbekistan. Therefore, the Fly America Act does not prohibit the member's reimbursement claim for the leg of his flight between Turkey and Uzbekistan. The Act does prohibit reimbursement for the leg from New York to Istanbul, Turkey. *See Sergeant Jeffrey A. Collins, USAF, B-219850, Feb. 19, 1986.*

The member's entire claim, however, is precluded by the lack of an affirmative authorization in his orders for him to procure his own transportation and by his use of a commercial travel office not under government contract. *See AFI 65-103, para. 3-3-16, and 1 JFTR U3120-A. See also DOHA Claims Case No. 97041009 (July 30, 1997).* While it is unfortunate that the member may have been misinformed concerning personal procurement of tickets, such misinformation does not provide a basis for payment of his claim since the government is not bound by the erroneous or negligent acts of its officers, agents, or employees. *Id.* Although the member states a belief that the requirements of the above regulations can be waived, this Office must render its decisions based on the regulations as written and cannot grant exceptions. *Id.* The memorandum from the Commandant of the member's school, which supports the member's claim, cannot provide a basis for the claim since a member's rights under travel orders vest at the time when the travel is performed; the orders therefore cannot be modified retroactively to increase or decrease the member's rights in the absence of clear error apparent on the face of the orders. *See Lieutenant Andrew J. Reinhart, USN, B-259663, June 12, 1995.* Moreover, the supporting memo did not demonstrate that the member had no alternative but to purchase tickets from a commercial travel office not under government contract.

Conclusion

We affirm the Settlement.

 /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 Fly America Act was formerly codified at 49 App. §§ 1517-1518.