

January 29, 1999

Claims Case No. 98120906

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In Re:

[Redacted]

Claimant

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## CLAIMS APPEALS BOARD DECISION

### DIGEST

An Air Force member's Overseas Housing Allowance (OHA) ceiling was miscalculated by base housing office personnel when the member arrived at his new duty station. He rented housing based on the information he had received. When he learned that the correct OHA ceiling was lower, he terminated his lease and moved to less expensive housing. He cannot be reimbursed for the amount he spent in excess of his entitlement, and we decline to submit his claim to Congress under the Meritorious Claims Act because it does not contain extraordinary equitable elements which would merit submission .

### DECISION

This is in response to an appeal of DOHA Settlement Certificate, DOHA Claim No. 98062922, Sept. 4, 1998, which denied an Air Force member's request that his claim for \$945 in non-reimbursed rental expenses be submitted to Congress under the Meritorious Claims Act.

### Background

Pursuant to orders transferring him from Japan to Germany, the member arrived at Rhein-Main Air Base in May 1997. He states that he indicated to housing personnel that he wished to rent housing within his Overseas Housing Allowance (OHA) ceiling. He was informed that his OHA ceiling was over 2400 German marks (DM) per month and thereupon rented a house at 2300 DM per month. When the OHA figure on his leave and earnings statement did not match the amount he had been told he would receive, he contacted his finance office in mid-August 1997. He was told that his OHA ceiling was 1750 DM. At the prevailing exchange rate, his rent therefore exceeded his OHA ceiling by approximately \$315 per month. The member apparently was liable for three months of rent for the house. The member's claim for \$945 (3 x \$315) was denied by finance personnel. He asks that his claim for the non-reimbursed rental expense be submitted to Congress by this Office under the Meritorious Claims Act.

### Discussion

When the Meritorious Claims Act of 1928, *now codified at* 31 U.S.C. § 3702(d),<sup>(1)</sup> was being considered for enactment, members of Congress were concerned about the "innumerable demands" which were being made for private relief. *See* S. Rep. No. 684, 70th Cong, 1st Sess., at 2 (1928). The Report noted the "vast amount of time" which Congress was spending to select from all those demands the "relatively few measures deserving of favorable consideration." *Id.* Congress enacted the Meritorious Claims Act in order to save time by having the Comptroller General, in effect, screen the requests for private bills.<sup>(2)</sup> It was the intent of Congress that the claims submitted be of an extraordinary nature and not likely to recur. Submitting claims of a recurring nature would not only be contrary to the purpose of the Act, but it would also constitute preferential treatment of some military members over others. *See Lingo D. Harrison, AIC, USAF, B-187216, Feb. 1, 1977.* The Comptroller General's standard for selecting claims to submit to Congress was consistent with the language of S. Rep. 684, *supra*. Moreover, in the almost seventy years that the Comptroller General exercised

the Meritorious Claims function, Congress could have directed him to modify his standard for selecting claims to submit to Congress if it felt that the standard was too high. We are aware of no such direction.

In *Major Gerald A. Lechliter, USA*, B-236008, May 7, 1991, the Comptroller General dealt with a member whose entitlement to Basic Allowance for Quarters (BAQ) and "rent plus" was miscalculated. Based on erroneous information that he was entitled to BAQ and rent plus totaling \$700 per month, he leased quarters for that amount for the duration of his tour of duty in Germany. After learning that his correct entitlement was \$466, he attempted to terminate his lease and was unable to do so. He claimed \$4,006.10 in non-reimbursed housing costs. The Comptroller General stated that the member could not be reimbursed in excess of his legal entitlement and that the entitlement could not be increased due to erroneous advice, since the government is not bound by erroneous acts or information of its officers, agents, or employees. The Comptroller General declined to submit the member's claim to Congress under the Meritorious Claims Act, noting that his receipt of erroneous advice regarding his entitlements did not constitute an extraordinary situation.<sup>(3)</sup> With regard specifically to erroneous information, *see also* DOHA Claims Case No. 97110304 (Jan. 12, 1998).

In the case before us, the member's situation is very similar to that in *Lechliter*, B-236008, *supra*. As in *Lechliter*, the member rented housing after being misinformed as to his housing entitlement. While in *Lechliter* the member was unable to terminate his lease, the member before us was apparently liable for only three months of rent in excess of his housing entitlement. In our view the claim before us does not possess unusual equitable elements which warrant submission to Congress under the Meritorious Claims Act. While it is unfortunate that the member was misinformed as to his housing entitlement, the receipt of erroneous information is not a unique occurrence,<sup>(4)</sup> and submission of the member's claim would constitute preferential treatment.

### Conclusion

We affirm the Settlement Certificate.

\_\_\_\_\_/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 Act was formerly codified at 31 U.S.C. § 236.
2. For members of the Uniformed Services, the Defense Office of Hearings and Appeals now performs the former role of the Comptroller General in submitting Meritorious Claims to Congress. *See* Pub. Law No. 104-53, § 211, 109 Stat. 514, 535 (1995).
3. The Comptroller General also noted that it was not unusual for a member to spend more than his housing allowance for housing and that the member had the benefit of residency in the more expensive quarters during his tour of duty overseas.

4. In this instance, the computation of the OHA ceiling is a complex operation requiring information from several sources and several calculations. *See* 1 Joint Federal Travel Regulations, app. K. The amount fluctuates with the exchange rate. The basis for the ceiling rates is the eightieth percentile of all rents paid by covered individuals in the area; accordingly, the rates are updated regularly.