

DATE: March 24, 1999

In Re:

[Redacted]

Claimant

)

Claims Case No. 99012908

CLAIMS APPEALS BOARD DECISION

DIGEST

A service member who was authorized the use of Aero Club aircraft for temporary duty travel (TDY) was charged a checkout fee, including ground and flight instruction and aircraft rental, by the Aero Club for a checkout required as a precondition to using the aircraft for TDY or any other purpose. Such a fee is not specifically provided for as a necessary expense under the Joint Federal Travel Regulations. In the absence of evidence to the contrary, the checkout fee is considered a personal expense and as such is not reimbursable.

DECISION

This is in response to an appeal of the Defense Office of Hearing and Appeals' (DOHA) June 12, 1998, Settlement Certificate, DOHA Claim No. 98032509, which sustained the Defense Finance and Accounting Office's (DFAS) denial of a Department of Defense (DoD) member's application for waiver of a debt of \$848.70.

Background

The record indicates that the member was issued a blanket travel order to proceed on temporary duty travel (TDY) at such times as may be necessary during the period October 1, 1996, through September 15, 1997, to any point within CONUS. The travel order stated that, weather permitting, the member was authorized to use Aero Club aircraft. During the stated time period, the member flew a multi-engine Aero Club aircraft on six separate dates. Prior to the first trip, the member was required by the Aero Club to satisfactorily complete a checkout in a multi-engine aircraft of the make and model of aircraft he wanted to use on TDY.

The member knew he would be traveling frequently during the year and that the availability of the commercial airline flights often required additional overnight stays at his destination. Thus, he elected to use Aero Club aircraft as a more time/cost effective approach to travel than by commercial airline. In October and November 1996, he chose to be checked out in the Aero Club's multi-engine aircraft to benefit from the speed of the larger plane. The Aero Club charged a checkout fee totaling \$848.70, including \$27.60 for 2.3 hours of ground instruction, \$81.60 for 5.1 hours of flight instruction, and \$739.50 for 5.1 hours of aircraft rental. The charge, according to the member, is required by the Aero Club due to its insurance requirements.⁽¹⁾ The checkout did not add to the member's qualifications as a pilot, as he already possessed a Federal Aviation Administration Airline Transport Rating for multi-engine aircraft. On each of the six trips, the member was accompanied by other government employees.⁽²⁾

In March of 1997, the member submitted a Purchase Request Form for the \$848.70 checkout fee. Apparently this was not paid, although no reason is provided in the record. On September 30, 1997, the member submitted an amended travel voucher for his first trip, seeking reimbursement for the checkout fee.⁽³⁾ Correspondence from the member states that he had been informed by the base legal staff that there was not an express prohibition of reimbursement for such a fee. He requested reimbursement of the aircraft checkout fee as a necessary expense and emphasized the cost savings to the government of his having piloted the Aero Club aircraft rather than he and his fellow travelers having flown with a

commercial airline.

Our Settlement Certificate denied the member's request for reimbursement of the checkout fee stating that it was not a necessary expense allowable under the provisions of the Joint Federal Travel Regulations (JFTR). The member appeals that decision.

Discussion

When a Service member makes a claim, the government's liability is limited to that provided by the relevant law and regulations. For travel claims, we must base our decision on the law and implementing regulations applicable to the situation at hand--in this case, the relevant portions of the JFTR. *See* DOHA Claims Case No. 96123013 (June 2, 1997). The provisions of paragraph U3210 of Volume 1 of the JFTR state in pertinent part regarding use of an Aero Club aircraft that

"When the use of such aircraft is authorized or approved for official travel, reimbursement will be the lesser of the actual necessary expenses or the cost to the government for commercial transportation...Necessary expenses incurred by the individual responsible for the aircraft include:

1. the hourly fee imposed by the Aero Club,
2. fuel charges if not reimbursable by the Aero Club, and
3. landing and tie-down fees (includes hangaring of aircraft in severe weather)."

The Comptroller General has stated that the purpose of an Aero Club is not to provide a more advantageous means of government travel, but rather to provide a recreational activity which would give eligible personnel an opportunity to enjoy safe, low cost, light aircraft operations and to promote positive morale. *See* 55 Comp. Gen. 1247 (1976). Although it is not disputed that the government benefitted during the year from this member having piloted the multi-engine aircraft, the member himself benefitted personally by having the ability to use the multi-engine aircraft for personal reasons. As the base legal office's memorandum indicates, the issue in this case is whether the checkout fee is to be considered a necessary expense and is thus reimbursable or whether it is a personal expense and not reimbursable. The JFTR does not specifically mention this particular fee as a necessary expense.

The concept of "necessary expense" is not unique to paragraph U3210 of volume 1 of the JFTR. There is a comparative concept in situations involving the availability of appropriations as to purpose, and the Comptroller General has dealt with this concept in a vast number of such decisions over the decades. *See generally* 1 General Accounting Office, *Principles of Federal Appropriations Law*, at 4-14 through 4-20 (2d ed. July 1991); and 65 Comp. Gen. 738, 740 (1986). "Necessary expense" is a relative concept: it is measured not by reference to an expenditure in a vacuum, but by assessing the relationship of the expenditure to the specific appropriation to be charged or to the program to be served. *Id.* But, in relevant part, where a given expenditure is neither specifically provided for, nor specifically prohibited, the question is whether it bears a reasonable relationship to fulfilling an authorized purpose or function. In the first instance, this determination is a matter of agency discretion. If the relationship between the expenditure and the authorized purpose is too attenuated, it is beyond the range of agency discretion. *See* B-223608, Dec. 19, 1988. In this claim, there is a proximate relationship between the authorized official travel for which reimbursement is available and such expenses as the Aero Club's hourly fee, any un-reimbursed fuel charges, and any landing and tie-down fees. However, the relationship between the authorized official travel and the checkout fee is too attenuated to be considered a "necessary expense."

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. Paragraph 3.13 of Air Force Manual 34-232, *Aero Club Operations*, November 1, 1997, requires that pilots shall satisfactorily complete a separate flight checkout, given by an instructor, for each make and model of aircraft that he/she is authorized to fly.
2. The record includes a cost comparison for travel of the member and the accompanying government passengers on each of the six trips. The total cost savings to the government as a result of the member piloting the Aero Club multi-engine aircraft on these trips was \$10,610.00.
3. The member had previously been reimbursed in accordance with his travel voucher dated November 7, 1996. The original voucher did not include the checkout fee.