

This decision was modified by the DoD Deputy General Counsel (Fiscal) on January 10, 2001.

July 28, 1999

In Re:

[Redacted]

Claimant

Claims Case No. 99051701

CLAIMS APPEALS BOARD DECISION

DIGEST

A member of the Commissioned Corps of the United States Public Health Service (USPHS) obtained loans intended partially for home improvements. When he submitted receipts as proof that he had spent the loan proceeds for approved purposes to increase his Variable Housing Allowance (VHA), the USPHS rejected some of the receipts and delayed crediting others to his VHA. VHA at the time in question was governed by the Joint Federal Travel Regulations (JFTR). The USPHS's handling of the receipts had to be in accordance with the JFTR, and we will give deference to the interpretation given to the JFTR by the Per Diem, Travel and Transportation Allowance Committee, the agency with the responsibility to administer the JFTR.

DECISION

We have been asked to render a decision regarding the claim of a member of the Commissioned Corps of the United States Public Health Service (USPHS) for increased Variable Housing Allowance (VHA). The member obtained loans for the purpose of making home improvements. The member objects to the USPHS's method of calculating the increase in VHA which is based on the loans.

Background

When the member refinanced his mortgage and took out two subordinate mortgages from 1992 through 1995, a component of each loan was for home improvements. Under the Joint Federal Travel Regulations (JFTR) in effect at that time, amounts spent on home improvements could provide a basis for increasing a member's Variable Housing Allowance (VHA) if the requirements of the JFTR were met.⁽¹⁾ The member states that he himself was making the improvements to his house and submitted receipts for the materials he purchased. According to figures he submitted to

this Office, he submitted receipts totaling \$21,263.15 to the USPHS. For VHA purposes they accepted receipts totaling \$11,057.93 and rejected the remaining \$10,205.22. The member questions the USPHS's rejection of receipts for materials he purchased on a credit card. Since the Internal Revenue Service (IRS) accepts credit card receipts as evidence of the expenditure of money, he argues that the USPHS should have accepted his credit card receipts as evidence that he spent funds from his mortgages for home improvements. He contends that the USPHS should have recalculated his VHA to reflect the full amount of each of his home improvement loans as soon as he began to repay each loan. He questions why some of his expenditures led to immediate increases in his VHA, while others were allowed to accumulate before his VHA was increased. The administrative report indicates that the USPHS disallowed some of the receipts after initially allowing them. This resulted in overpayment of VHA in the amount of \$605.21. The USPHS has collected that amount from the member.

Discussion

Prior to January 1, 1998, VHA was paid to eligible members to help defray the cost of living in a high-cost area. The regulations governing VHA were found in Chapter 8 of Volume 1 of the JFTR, which were administered by the Per Diem, Travel and Transportation Allowance Committee (Committee).⁽²⁾ The types of loans which may qualify for inclusion in VHA are set out in 1 JFTR paragraph U8001F. To qualify, a loan could have been a first mortgage for the purchase of a home, a first mortgage to refinance, a real estate equity loan (e.g., a second mortgage), or a personal installment loan (not to include a credit card loan or line of credit loan); only those amounts actually spent to repair, renovate, or enlarge a member's home qualified for inclusion in VHA.

The issue before us involves the interpretation of an administrative regulation. In such a situation, great deference must be given to the regulation's interpretation by the agency which administers it. This is a principle of long standing with the Comptroller General and the Claims Appeals Board of the Defense Office of Hearings and Appeals as his successor. *See Senior Airman Calvin S. Watford, Jr.*, B-270432, June 24, 1996. *See also* B-222666, Jan. 11, 1988, in which the Comptroller General quoted a series of court cases on the subject of deference to agency interpretation. In *Belco Petroleum Corp v. FERC*, 589 F.2d 680, 685 (D.C. Cir. 1978), the United States Court of Appeals for the District of Columbia Circuit stated that it would give great deference to an agency's interpretation even if the agency's interpretation is not the only one possible or if the court would have adopted a different interpretation if left on its own. In *Bowles v. Seminole Rock Co.*, 325 U.S. 410, 413 (1945), the Supreme Court said that if there is doubt as to the interpretation of a regulation, the agency's interpretation has controlling weight unless it is "plainly erroneous or inconsistent" with the words of the regulation.

We contacted the Committee and asked their views on the member's claim. We were informally advised that the Committee agrees with the USPHS's refusal to allow the member's credit card receipts as proof of allowable expenditures for VHA purposes. In our view that is dispositive of that portion of the member's claim. In light of the principle of deference discussed above, the fact that this Office or the IRS might have reached a different conclusion is irrelevant, because the Committee is the body which has the duty to administer the JFTR.

While the member contends that as soon as repayment began the USPHS should have included the proceeds of his loans which were designated for home improvements in the calculation of his VHA, the Committee agreed with the USPHS's methods with regard to this issue. The USPHS had a duty under the JFTR to verify that the proceeds were put to approved uses. *See* 1 JFTR para. U8001F-4. Likewise, the combining of small expenditures before the member's VHA was recalculated was a reasonable policy.

However, the Committee did not approve of the USPHS's disallowance of expenditures because they were made more than one year after the loan was granted. The USPHS had a duty under the JFTR to verify that the expenditures were made for allowable purposes and could establish reasonable tracing requirements; but in the Committee's view, the one-year requirement was an arbitrary requirement not in accordance with the JFTR. [\(3\)](#)

We have been advised that the USPHS's determinations regarding the member's expenditures have no effect on his current housing entitlements due to the January 1998 change from BAQ and VHA to BAH with a VHA component. However, the record indicates that the USPHS retroactively disallowed some of the member's expenditures and retroactively reduced his VHA. The amount of the debt which arose from the retroactive reduction was collected from the member. The record indicates that the member requests waiver of that debt and refund of the amounts he repaid. If the member meets the standards for waiver set forth in 4 C.F.R. § 91.4, the USPHS may waive his debt since it is less than \$1,500. If the USPHS denies his waiver request, this Office has the authority to consider his appeal. *See* Pub. L. No. 104-316, § 105(b), 110 Stat. 3826, 3830 (1996). *See also* Comptroller General decision B-275605, Mar. 17, 1997.

Conclusion

The member's claim and waiver request should be handled accordingly.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeal Board

1. Under Pub. L. No. 105-85, Div. A, Title 6, § 603(a), 111 Stat. 1775 (1997), VHA became a component of Basic Allowance for Housing (BAH), effective January 1, 1998.
2. BAH, the new allowance cited in footnote 1, is administered by the Defense Finance and Accounting Service. The regulations governing it are found in Interim Change 14-99 to the Department of Defense Financial Management Regulation, 7000.14-R, volume 7A. Since the transactions which gave rise to the claim before us occurred before January 1, 1998, the VHA provisions in the JFTR apply to this claim.
3. It appears that the USPHS did not have written regulations for handling VHA claims based on loans for home improvements. Their informal procedures should have been in accordance with the JFTR.