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DATE: April 19, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 99092919

CLAIMS APPEALS BOARD DECISION

DIGEST

A member who purchased airline tickets for official travel pursuant to Consecutive Overseas Tour (COT) leave did not purchase the tickets from a travel agency under government contract or other approved facility, and such a facility appears to have existed at his overseas assignment. Reimbursement of the member is not proper because paragraph U3120-A of volume 1 of the Joint Federal Travel Regulations (JFTR) requires that the member purchase tickets from one of the facilities described in 1 JFTR ¶ U3120-A unless the order issuing official authorized purchase from a non-authorized facility due to unusual circumstances, or under 1 JFTR ¶ U3120-B the member can demonstrate that such a facility was not reasonably available at his overseas location.

DECISION

The member appeals a decision by the Defense Finance and Accounting Service (DFAS) to deny his claim for reimbursement of airfare for Consecutive Overseas Tour (COT) leave. DFAS denied reimbursement because the member procured his transportation from a source other than those provided in paragraph U3120-A of volume 1 of the Joint Federal Travel Regulations (JFTR) and no exception applied. The Claims Appeals Board directly settles this claim for purposes of administrative convenience.

Background

The record indicates that the member was entitled to COT by virtue of his consecutive overseas assignments, and the member chose to use the entitlement with February 1999 travel from Ramstein Air Base, Germany, to Okinawa, Japan, and return to Ramstein. It is uncontested that the member obtained transportation from a source other than those described in 1 JFTR ¶ 3120-A.⁽¹⁾ When the member returned, he submitted his travel voucher. He initially failed to actually request payment for his tickets, but by March 1999, the member was advised by an official at the local finance office (Ramstein Financial Services Office) that he was unable to pay the member's claim for the transportation (valued at \$961.70), because the member did not purchase his tickets through the TMO/SATO travel office like other official travel. Apparently, the member's March 1999 request to retroactively amend his orders was also unsuccessful.⁽²⁾

The member is aware of prior decisions issued by this Office in which we denied reimbursement when travelers failed to use one of the travel offices described in paragraph U3120-A when arranging official travel. However, he believes that his circumstances are "unique." The member argues that he made the effort to obtain the latest guidance available and actually obtained the *COT/PCOT Facts Booklet* published by the Ramstein Financial Services Office and dated March 19, 1997. The member argues that he also made the effort to update the 1997 publication to make sure he had the latest information available. He went to Ramstein's Financial Services Office homepage on the World Wide Web (web page). Neither of these publications mentioned any requirement to arrange COT travel through a facility noted in 1 JFTR ¶ U3120-A, and the member believes that a prudent traveler should have been able to rely on these publications. The member believed that the main advice from these publications was guidance to ensure that members obtain an authorization to obtain their own tickets and that orders contain a statement of non-availability from the travel management officer when no American-flag carrier is available. The member suggests that he did everything to make certain that he followed both of these requirements. The member also contends that when he obtained the statement of non-availability of an American-flag carrier from the TMO, the TMO, which he believes was also the CTO, should have warned him to buy the tickets in that office. The local finance official admitted that the web page did not mention the requirement to buy tickets for official travel from the contract CTO, and he indicated that his office would update the web page.

Discussion

Government officials here did not incorrectly advise the member of the governing policy, but apparently they failed to advise him of any policy. Even if they had misadvised the member about the requirements of 1 JFTR ¶ U3120, there would have been no basis for relief. For travel claims, we must base our decisions on the law and implementing regulations applicable to the situation at hand--in this case, the relevant portions of the JFTR in effect at the time the member traveled. See DOHA Claims Case No. 96123013 (June 2, 1997). In the context of this regulation, we have held that the fact that the member was not advised to use an approved facility does not provide a basis for payment, since the government is not liable for the erroneous or negligent actions of its officers, agents, or employees. *See, for example*, DOHA Claims Case No. 97041009 (July 30, 1997); DOHA Claims Case No. 98051405 (May 20, 1998); and *Petty Officer John R. Blaylock*, 60 Comp. Gen. 257 (1981). Moreover, orders cannot be modified retroactively to increase or decrease the member's rights in the absence of a clear error on the face of the orders. *See* DOHA Claims Case No. 98120402 (January 14, 1999).

The prohibition against disbursements not authorized by statute or regulation is so fundamental that even if the web page or *Facts Booklet* or an actual government official had positively misrepresented to the member that the member did not need to use a facility described in 1 JFTR ¶ U3120-A, the member still would not have had the right to reimbursement. The government is neither bound nor estopped by the erroneous or unauthorized acts of its officers, agents, or employees even though committed in the performance of their official duties, and it is a well-settled rule of law that the government is not bound by the erroneous advice of its officers or employees, when such advice contravenes existing regulations. *See* DOHA Claims Case No. 99092806 (February 4, 2000) citing *Joseph Pradarits*, 56 Comp. Gen. 131 (1976), and *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), *reh'g denied* 497 U.S. 1046 (1990).

Conclusion

The member's claim is disallowed.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. At the time that the member traveled, 1 JFTR ¶ U3120-A provided that in arranging official travel, personnel are required to use a commercial travel office under government contract, an in-house travel office, or a General Services Administration Travel Management Center. As an exception "the order issuing official must authorize/approve that unusual circumstances exist for a traveler to be reimbursed for transportation procured directly from a common carrier or a CTO not under Government contract." Paragraph U3120-B of volume 1 of the JFTR provided an additional exception in foreign countries other than Mexico and Canada which permitted use of non-contract CTOs "when services of a contract CTO aren't reasonably available and ticketing arrangements can't be secured from a branch office or general agent of an American-flag carrier."

2. The record contains a copy of an Air Force Form 973, *Request and Authorization for Change of Administrative Orders*, which was not signed by the appropriate orders-authenticating official, that would have added the following in the "remarks" block: "UNUSUAL CIRCUMSTANCES EXIST FOR TRAVELER TO BE REIMBURSED FOR TRANSPORTATION PROCURED DIRECTLY FROM A COMMON CARRIER OR A CTO NOT UNDER GOVT CONTRACT VERBAL ORDER OF THE COMMANDER DATED 4 JAN 99 ARE CONFIRMED."