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DATE: May 5, 2000

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In Re:

[Redacted]

Claimant

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Claims Case No. 99101308

## CLAIMS APPEALS BOARD DECISION

### DIGEST

A member who purchased airline tickets for temporary duty official travel did not purchase the tickets from a travel agency under government contract or other approved facility. Reimbursement of the member is not proper because paragraph U3120 of volume 1 of the Joint Federal Travel Regulations (1 JFTR ¶ U3120) requires that the member purchase tickets from one of the facilities described in 1 JFTR ¶ U3120-A1 unless under 1 JFTR ¶ U3120-B the order-issuing official authorized or later approved purchase from a non-authorized facility due to unusual circumstances when there was no alternative.

### DECISION

The member appeals a decision by the Defense Finance and Accounting Service (DFAS) to deny his claim for reimbursement for airline tickets he purchased for temporary duty travel (TDY). 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. [\(U\)](#) The Claims Appeal Board settles this matter for purposes of administrative convenience.

### Background

The record indicates that the member was ordered to travel from Cannon Air Force Base, New Mexico, to Orlando, Florida, to perform temporary duty during the period June 20-26, 1999. The member purchased his tickets directly from the air carrier using electronic ticketing procedures. The member was authorized to take leave near his temporary duty location in conjunction with his travel, and he returned on July 3rd. When the member returned, he submitted a travel voucher for his expenses, including \$389 for his round trip fare to Orlando. DFAS denied reimbursement because the member failed to obtain his tickets from an authorized facility as described in 1 JFTR ¶ U3120-A, and the order issuing authority has not approved procurement from a non-authorized source on the basis that unusual circumstances existed indicating that the member had no alternative. The record does not indicate that the member attempted to use an authorized source (e.g., the SATO office on base).

The member and his squadron commander note various things in support of the member's position. The member stated that he was advised by a senior non-commissioned officer in his unit with responsibility for travel that so long as standard Item 4 was in the remarks portion of the travel order, the member was free to purchase his own plane ticket. Item 4 was in the member's travel order, and in relevant part stated: "For traveler's convenience, round trip travel by personally procured transportation is authorized." The member stated that he was never instructed to purchase his tickets from SATO. The member also stated that installation finance staff failed to warn him about the requirements contained in 1 JFTR ¶ U3120-A.

The member's commander points out that the language of Item 4 was so confusing that it led to a re-write of the language. He suggests that the language contained no indication that the member was still required to purchase from an authorized source if he was authorized to make his own purchases. The commander confirms the advice that his NCOIC provided to the member and suggests that if his senior NCO who had some knowledge of the travel regulations, was not aware of the requirements in 1 JFTR ¶ U3120-A, the member should not be expected to be aware of these requirements.

### Discussion

An amendment to the JFTR which changed Department of Defense policy to preclude reimbursement in these circumstances has been in effect since January 1, 1995. *See* 1 JFTR ¶ U3120 (Ch. 97, January 1, 1995) and our discussion in DOHA Claims Case No. 97041007 (August 22, 1997). Our Office has denied reimbursement to members in circumstances similar to those of this claimant since the time that claims based on the post-1994 JFTR began to be decided by us in 1997. *See* DOHA Claims Case No. 97031010 (September 16, 1997); DOHA Claims Case No. 97041006 (August 26, 1997); DOHA Claims Case No. 97041007, *supra*; DOHA Claims Case No. 97030601 (July 30, 1997); DOHA Claims Case No. 97041009 (July 30, 1997); and DOHA Claims Case No. 97020601 (June 26, 1997). We recognize that ¶ U3120, and surrounding paragraphs, were amended by Change 150 (effective June 1, 1999). Change 150 removed the direct language in ¶ U3120-A that required the order issuing official to "authorize/approve that unusual circumstances exist for a traveler to be reimbursed." But under the amended JFTR, the result is still the same. A reasonable interpretation of the payment limitation in 1 JFTR ¶ U3120-B2 clearly assumes that authorization or approval must be given by the order-issuing official as a condition precedent to any payment. The member here did not obtain that authorization or approval, nor did he make any effort to use authorized facilities.

We have no reason to doubt that the member, his commander and squadron-level administrative officials were unaware of the non-reimbursement policy. It also appears that first-line installation finance staff members likewise were unaware of the policy. We realize that more than four years elapsed between policy implementation and the member's travel. Unfortunately, we are constrained by the policy enunciated in the JFTR. Government officials here did not incorrectly advise the member of the governing policy; they failed to advise him of any policy. But, even if they had misadvised him, there would have been no basis for relief.<sup>(2)</sup> 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*, the discussion in DOHA Claims Case Nos. 97041009, 97030601, 97041006 and 97031010, *supra*. *See also* DOHA Claims Case No. 98051405 (May 20, 1998); and *Petty Officer John R. Blaylock*, 60 Comp. Gen. 257 (1981). While not dispositive of the outcome, we note that DOHA 97041009, *supra*, also involved a travel order which specifically stated (incorrectly) that the member may purchase tickets directly from a carrier, and in DOHA Claims Case No. 97020601, *supra*, we denied reimbursement to the extent that the member had not already been erroneously paid where a member was misadvised during a formal briefing.

The prohibition against disbursements not authorized by statute or regulation is so fundamental that even if an actual government official had specifically misinformed the member that he 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

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Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

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Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

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Jean E. Smallin

Member, Claims Appeals Board

1. At the time that the member traveled (JFTR Change 150), 1 JFTR ¶ U3120-A1 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. But, under 1 JFTR ¶ U3120-B, the order-issuing official may authorize/approve direct purchase from a non-contract travel agent or common carrier when unusual circumstances existed and there was no alternative. In a foreign country, a non-contract travel agent may be used when CTO services were not reasonably available and ticketing arrangements could not have been made through a branch office or general agent of an American-flag carrier. The exceptions in 1 JFTR ¶ U3120-B were prefaced with the following note: "When a non-contract CTO is used, the member must demonstrate that use of a contract CTO was attempted. The last paragraph of 1 JFTR ¶ U3120-B contains the following payment limitation: "Reimbursement for transportation arranged through authorized/approved use of a non-contract travel agent or common carrier . . . is limited to the amount the member would have paid if the arrangements had been made directly through the carrier(s)."

2. The facts here indicate more of a failure by government officials to provide advice than an active misrepresentation, *i.e.* providing incorrect advice.