

This decision was affirmed by the Deputy General Counsel (Fiscal), Department of Defense, on December 21, 2001.

March 21, 2000

In Re:

[Redacted]

Claimant

Claims Case No. 99122105

CLAIMS APPEALS BOARD DECISION

DIGEST

A Coast Guard member requested authorization for a do-it-yourself (DITY) move in order to receive a DITY move incentive payment to sail the sailboat on which he lives from his old duty station to his new one. The Coast Guard refused to authorize the DITY move. The member's claim for the incentive payment is denied because paragraph U5320-E of volume 1 of the Joint Federal Travel Regulations requires Service approval. The member is entitled to reimbursement for the actual expenses incurred in sailing the boat between his old and new duty stations or \$.30 per mile for the distance between the duty stations.

DECISION

This is in response to an appeal of Defense Office of Hearings and Appeals (DOHA) Settlement Certificate 98122121, dated February 23, 1999, which denied the claim of a Coast Guard member for transportation of his sailboat as a do-it-yourself (DITY) household goods move.

Background

On March 1, 1995, the member received orders transferring him from Long Beach, California, to Alameda, California. In Long Beach, he and his wife resided on a 43'10" cutter-type sailboat with a displacement weight of 25,000 pounds. Since they planned to live on the sailboat in Alameda, the member requested formal Coast Guard permission on May 30, 1995, for a DITY household goods move. Not having received a response to his DITY move request, the member sailed the boat to his new duty station, completing the trip on July 24, 1995. The Coast Guard's denial of his request was dated December 13, 1996. The member appealed the denial. The Coast Guard submitted the request to the Per Diem,

Travel and Transportation Allowance Committee (PDTTAC) in December 1997. In November 1998 the PDTTAC returned it to the Coast Guard for submission to DOHA. In the memo accompanying the member's request, the Coast Guard stated its view that the member is entitled to the actual expenses he incurred in moving his sailboat or \$.30 per mile of overland mileage between his old and new duty stations. DOHA received the request in December 1998 and issued a Settlement Certificate two months later. In the Settlement Certificate we agreed with the Coast Guard's recommendation. Since the member did not submit any expense records, we allowed 431 miles (the official distance between the duty stations) at \$.30 per mile, or \$129.30.

The member argues that his claim for a DITY move incentive payment should be allowed under the general provision for DITY moves then found in section 406(k) of title 37 of the United States Code, without regard for the specific requirements for DITY moves found in volume 1 of the Joint Federal Travel Regulations (JFTR). He objects to the analysis in the Settlement Certificate under which his sailboat is characterized as a "mobile dwelling." He notes that sailboats are included in a list of boats that are classified as household goods in the JFTR. He argues that his claim for an incentive payment should be allowed because he could have chosen to have his sailboat transported at government expense or incurred other expenses for which he would have been entitled to reimbursement.⁽¹⁾

Discussion

As the member points out, 37 U.S.C. § 406(k) provides for DITY moves. He is correct that the limitations on the DITY move entitlement are found not in the statute but in the JFTR. This includes the requirement that a member's DITY move be approved by his Service if the member is to be entitled to DITY move incentive payments. *See* 1 JFTR ¶ U5320-E. However, throughout the travel provisions of title 37, including § 406(k), there are statements authorizing the Secretaries of the Services to issue regulations for the implementation of the statutory travel provisions. The JFTR are those implementing regulations and therefore have the force of law. Since this Office must issue decisions in accordance with the applicable statutes and regulations as well as prior decisions of this Office and the Comptroller General, we cannot allow a claim at variance with the JFTR. Because 1 JFTR ¶ U5320-E requires that a DITY move be approved if a member is to be entitled to incentive payments and the Coast Guard refused to approve it (either before or after the move was performed), the member's claim cannot be allowed.

In its submission the Coast Guard stated its view that the member is entitled to the actual expenses he incurred in moving his sailboat or \$0.30 per mile for the distance between his old and new duty stations. Our adjudicator reviewed the relevant portions of the JFTR and analogous decisions of the Comptroller General and agreed with the Coast Guard's determination. We find no error in the Settlement Certificate. In situations such as the one before us, when a member sailed to his new duty station by boat, the Comptroller General treated the boat as a "mobile dwelling" for the purpose of determining travel entitlements. *Compare Lieutenant Christopher J. Donovan, USAF, 62 Comp. Gen. 292 (1983).*⁽²⁾ *See also Captain William I. Parrish, USN, 59 Comp Gen. 737 (1980).*⁽³⁾ While the member does not agree with the Comptroller General's treatment of a boat on which a member lives as a "mobile dwelling," we find the Comptroller General's analogy to be reasonable and convincing.

The member calls our attention to Comptroller General decision *Major Courtney L. Jordan, Jr., USAF, B-243745, Nov. 6, 1991*, in which a member was reimbursed for shipping his small sailboat in a DITY move. When the member moved his boat, neither the member nor the Air Force was aware that the JFTR had been amended to allow the shipment of

boats as household goods. Therefore he did not seek approval for a DITY move. The Comptroller General ruled that the member was not entitled to an incentive payment under the DITY move program because of the lack of prior authorization, but could be reimbursed for his actual expenses if he could reconstruct them.

In the case before us, the member requested prior approval for a DITY move, and the Coast Guard was aware of the requirement for its approval. While the record does not reveal the reason for the Coast Guard's delay in notifying the member of its disapproval, the fact remains that the Coast Guard has never approved his request. As in the *Jordan* case discussed above, the member therefore is not entitled to a DITY move incentive payment because there was no authorization.

One difference should be noted, however, between the member's situation and that in the *Jordan* decision. While 1 JFTR ¶ U5310-F does allow the shipment of boats as household goods, that provision was intended to apply to small, light boats which can be crated and included as part of a member's household goods (with the member to absorb the extra costs such as crating and special handling).⁽⁴⁾ Before 1988, boats were specifically excluded from the definition of household goods. In 67 Comp. Gen. 230 (1988), the Comptroller General approved changing the JFTR to allow boats to be included in the definition of household goods. The decision clearly pointed out that the boats to be included in the definition were small ones which the Comptroller General said were analogous to small recreational vehicles such as snowmobiles, motorcycles, mopeds, and golf carts.⁽⁵⁾ The 43' 10" sailboat with a 25,000 pound displacement in the case before us could not be crated and moved as part of a shipment of household goods.

As stated above, this Office must render decisions based on the applicable statutes, regulations, and prior administrative decisions. Since 1 JFTR ¶ U5320-E requires DITY move approval which the member did not receive, his claim must be denied. The fact that the member could have chosen a more expensive method for moving to his new duty station is not relevant to his entitlement to reimbursement for the method he chose. *Compare Kevin P. Dooley*, B-231785, Aug. 3, 1988.

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 member states that he was told by transportation personnel that the government would have paid \$3,910 for transportation of his sailboat to his new duty station. Therefore, he claims eighty percent of that amount (\$3,128) as a DITY move incentive payment.
2. The member was allowed to transport the houseboat on which he lived. His entitlement was based on the mileage involved.
3. That decision involved transoceanic travel. The member was limited to the actual expenses of operating the sailboat (fuel, oil, and docking fees).
4. Because of the extra handling charges and the weight surcharge added to the weight of the member's household goods, shipment of all but the smallest, lightest boats as household goods is not practical for most members. *See B-265922, Oct. 24, 1995.*
5. In a footnote the Comptroller General noted that certain boats used as residences may be transported at government expense as mobile dwellings as discussed in *Donovan, 62 Comp. Gen. 292, supra.*