

KEYWORDS: military member travel claim

DIGEST: The Joint Federal Travel Regulations (JFTR), Volume 1, ¶ U7150 states that it applies to a Reserve Component member called (or ordered) to active duty for any reason with pay under an authorization/order that provides for return to home or PLEAD (place of entry on active duty). Travel and/or transportation allowances are not authorized for travel between the home/PLEAD and the place of active duty when: (1) both are in the corporate limits of the same city or town, (2) the member commutes daily between the home/PLEAD and the place of active duty, or (3) the AO[order authorizing or approving official]/Installation commander determines that both are within reasonable commuting distance of each other in accordance with ¶ U3500-B and that the nature of the duty involved permits commuting.

CASENO: 2009-CL-100601.2

DATE: 9/01/2010

DATE: September 1, 2010

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In Re: )

[REDACTED] )

) Claims Case No. 2009-CL-100601.2

Claimant )

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**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The Joint Federal Travel Regulations (JFTR), Volume 1, ¶ U7150 states that it applies to a Reserve Component member called (or ordered) to active duty for any reason with pay under an authorization/order that provides for return to home or PLEAD (place of entry on active duty). Travel and/or transportation allowances are not authorized for travel between the home/PLEAD and the place of active duty when: (1) both are in the corporate limits of the same city or town, (2) the member commutes daily between the home/PLEAD and the place of active duty, or (3) the AO[order authorizing or approving official]/Installation commander determines that both are within reasonable commuting distance of each other in accordance with ¶ U3500-B and that the nature of the duty involved permits commuting.

## **DECISION**

A Reserve Component member of the Utah Army National Guard requests reconsideration of the July 6, 2010, decision of the Defense Office of Hearings and Appeals (DOHA), in DOHA Claim No. 2009-CL-100601. In that decision, DOHA granted the member's request for reimbursement for per diem during periods of active duty (AD) performed at Fort Carson, Colorado, if properly documented and otherwise correct. DOHA granted reimbursement for one round trip from her home, when her first AD order was issued, to her first AD station. All other requests for reimbursement have been disallowed.

### **Background**

The record shows that the member enlisted in the Utah Army National Guard on July 9, 2004. Starting August 11, 2004, until January 21, 2010, the member has been continuously on AD, with the exception of one day, August 14, 2004. At some point the member began to seek payment of per diem for her time on AD. The United States Property and Fiscal Office for Utah (USPFO-UT) requested by memorandum, dated May 20, 2009, to the Defense Finance and Accounting Service (DFAS) that they make a determination on the matter of per diem for the member. USPFO-UT noted that the potential liability to the Federal government might exceed \$100,000. By memorandum dated July 16, 2009, to USPFO-UT, DFAS advised that travel entitlements are determined by the address listed at the top of the orders because that address is considered to be the member's Place from Which Called (or Ordered) to Active Duty, better known by the older term Place of Entry on Active Duty (or PLEAD, an abbreviation still officially used). DFAS advised that per diem could not be paid if the PLEAD was in the commuting area of the AD station. By e-mail message to the member dated July 21, 2009, USPFO-UT advised that it follows DFAS's travel policies. The member appealed DFAS's findings by letter dated July 22, 2009. In a memorandum for record dated July 23, 2009, and an e-mail message to the member of the same date, USPFO-UT denied per diem for the member and forwarded its findings to DFAS.

In a letter dated August 14, 2009, DFAS denied the member's claim for per diem. DFAS found that the member's PLEAD was at the top of her orders. DFAS noted that a PLEAD can be changed only upon a break in AD of greater than one full day. Since that had not happened in the member's career, that location has been her PLEAD throughout her AD service. DFAS determined that since the member commuted daily between her residence and her PLEAD, no per diem can be paid. The member appealed the determination of DFAS, arguing that she was entitled to per diem on the grounds that her home of record (HOR) was another location and that the HOR is controlling even if it is not in the address area at the top of the orders. DFAS forwarded the claim to our Office, again denying her claim.

In the July 6, 2010 Appeal Decision, the adjudicator noted the well-established rule that reimbursement may be paid only for an expense authorized by statute or regulation. In that vein, the adjudicator determined that no per diem could be paid between the member's residence and her PLEAD. He did, however, determine that she was authorized one round trip between her PLEAD and her place of duty. She was also authorized payment, upon presentation of properly

documented and otherwise correct travel vouchers, for her travel and per diem from her place of duty to Fort Carson. This opinion of our Office was dated July 6, 2010.

At the close of the Appeal Decision from our Office was the standard paragraph that stated:

[The member] may request a reconsideration of this Appeal Decision, but as noted in the Instruction ¶ E7.13 [Department of Defense Instruction 1340.21], our Office must actually receive that request within 30 days of the date of the Appeal Decision. We may extend this period for up to an additional 30 days for good cause shown, if the request for an extension of time is actually received within the original 30 days. . . . If the end of the 30-day period is near, to assure receipt within 30 days, a signed copy of the request for reconsideration may be sent to us by fax at [redacted] and the original then immediately transmitted by first class mail.

The member requested reconsideration by e-mail to one of this Office's adjudicators, who reminded her that in order for the request to be considered she had to send the original by mail, but could fax it in initially to get it in within the 30 days. The member faxed in her request on August 6, 2010, requesting a 30-day extension to complete her reconsideration request. On August 10, 2010, this Office denied the member's request for an extension, citing the Instruction, ¶ E7.13, that the request did not contain any demonstration of good cause for an extension. This Office found a sufficient intent to request reconsideration based on material that had already been timely presented. On August 19, 2010, the member e-mailed this Office that she had received the denial letter regarding the 30-day extension, but still presented facts for the Board to consider.<sup>1</sup>

## Discussion

The general rule is that reimbursement may be paid only for an expense authorized by statute or regulation. *See* Comptroller General decision B-205113, Feb. 12, 1982. Decisions on travel claims are rendered according to applicable Department of Defense regulations. *See* DOHA Claims Case No. 97051416, October 27, 1998. Volume 1, JFTR, ¶ U7150, states:

### U7150 RC MEMBER TRAVEL

#### A. Active Duty with Pay (48 Comp. Gen. 301 (1968))

##### 1. General

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<sup>1</sup>The member advised that her mobilization orders stated that she was entitled to meals and lodging at government expense and was in a TDY status for the entire length of the tour. The various orders were exhaustively examined and fully considered in the Appeal Decision. Even if this had been new, additional information, and if the member had properly raised it in an authorized reconsideration communication to this Board, it is likely that it would not have been considered at this point in the process because ¶ E5.7 of the Instruction generally requires that all relevant evidence to prove a claim be presented when the claim is first submitted. While not dispositive here, we note that e-mail is not an authorized form of communication in the reconsideration process. Use of it in lieu of signed correspondence, transmitted by first (or higher class) mail, with or without advance fax, could result in a finding that a request for reconsideration, or a request to extend time to complete one, is untimely.

a. Applicability. Par. U7150-A applies to an RC member called (or ordered) to active duty for any reason with pay under an order that provides for return to home/PLEAD.

b. Travel and Transportation Allowances when a Member Commutes. *Travel and/or transportation allowances are not authorized for travel between the home/PLEAD and the place of active duty when:*

(1) Both are in the corporate limits of the same city or town.

(2) The member commutes daily between home/PLEAD and the place of active duty, or

(3) The AO[order authorizing or approval official]/INSTALLATION commander determines that both are within reasonable commuting distance of each other IAW par. U3500-B and that the nature of the duty involved permits commuting.<sup>2</sup>

During the period the member seeks reimbursement for travel and transportation, she performed AD at three locations: her PLEAD, Fort Carson, Colorado, and a third location. The Defense Table of Official Distances (DTOD) states that her residence is 23.5 miles from her PLEAD and 28.7 miles from the third location. The distance between her PLEAD and the third location is 11.1 miles. The record does not show that any of these locations are within the corporate limits of each other. The record does not show that competent authority has made formal designations of commuting distances. So, given the close proximity of each of these locations, 1 JFTR ¶ U7150-A1b(2) applies. Per Diem is not payable if the member commutes daily between the member's AD station and her home or PLEAD.

We then turn to the definition of PLEAD. 1 JFTR Appendix A (emphasis in original) states:

1. The place of acceptance in current enlistment, commission, or appointment of an active Service member, or of an RC [reserve component] member when enlisted, commissioned, or appointed for immediate active duty. For an inductee, it's the location of the local Selective Service Board to which the individual first reported for delivery to the induction station.
2. In the case of an RC member who is not enlisted, commissioned, or appointed for immediate active duty, the place to which an order to active duty is addressed.
3. . . . In the case of a non-prior service midshipman or cadet at a Service academy or a civilian college or university, the place **at which** the member attains a military status or

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<sup>2</sup> This citation is from 1 JFTR current as of Change 284, August 1, 2010. Although there were some minor changes in wording, the regulations were not substantively different during the period in question.

**at which** the member enters the Service. *NOTE: Generally this is the academic institution and not the member's HOR (60 Comp. Gen. 142 (1980)).*

*NOTE: The PLEAD changes only if there is a break in service exceeding one full day, in which case it is the place of entry into the new period of service.*

The member enlisted in the Utah Army National Guard in July 9, 2004, but was not called to AD until August 11, 2004. Therefore, the second definition applies. The order that called the member to AD, dated August 11, 2004, was addressed to her PLEAD at the top of the order. As stated in the "Note" at the end of the definition, the PLEAD can only change if there is a break in AD exceeding one full day. The record shows there was only one break in AD, and the break did not exceed one full day. The PLEAD was the same on the next set of orders. For these reasons, the member's PLEAD remains the same.

The member has continued to argue that she should be entitled to per diem by virtue of her home of record. The regulations do not support this. That she is not entitled to per diem for her time at her PLEAD and the third location has been determined by DFAS, the component concerned which made the initial determination, the United States Property and Fiscal Office for Utah, and the Department of the Army Office of the Inspector General. Additionally, in this instance, under the Instruction, ¶ E7.9, given that the amount in controversy exceeded \$100,000, this claim was coordinated with the Department of Defense Office of General Counsel.

For the reasons stated above, this Office finds no basis to change the determination of the appeal decision.

### **Conclusion**

The request for reconsideration is denied, and the Appeal Decision of July 6, 2010, is affirmed. In accordance with the Instruction, ¶ E7.15, this is the final administrative action of the Department of Defense in this matter.

*///Original Signed///*

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Michael D. Hipple  
Chairman, Claims Appeals Board

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Jean E. Smallin  
Member, Claims Appeals Board

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Natalie Lewis Bley  
Member, Claims Appeals Board