

KEYWORDS: service member travel claim

DIGEST: Generally, volume 1 of the Joint Federal Travel Regulations ¶ U4102-D provides that per diem is not payable at the old or new PDS for temporary duty en route in connection with PCS travel. This applies even if the member vacated the permanent quarters at the old PDS and lodged in temporary quarters during temporary duty.

CASENO: 2009-CL-121402.3

DATE: 4/21/2010

DATE: April 21, 2010

_____)
In Re:)
 [REDACTED]) Claims Case No. 2009-CL-121402.3
))
Claimant _____)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Generally, volume 1 of the Joint Federal Travel Regulations ¶ U4102-D provides that per diem is not payable at the old or new PDS for temporary duty en route in connection with PCS travel. This applies even if the member vacated the permanent quarters at the old PDS and lodged in temporary quarters during temporary duty.

DECISION

A member of the Air Force requests reconsideration of the March 19, 2010, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2009-CL-121402.2. In that decision, DOHA affirmed the initial determination of the Defense Finance and Accounting Service (DFAS) which disallowed the member's claim for per diem.

Background

The record indicates that the member was issued permanent change of station (PCS) orders in January 2009 to transfer from an installation outside of the United States to an installation inside the continental United States, with a report date no later than August 30, 2009. In May 2009, the member received orders for temporary duty for training beginning on a date in June 2009, to the same installation to which she was reassigned for permanent duty in the PCS orders. The member arrived for training and was given a non-availability statement. She lodged off the installation in a hotel during training. At the conclusion of the training, the member did not return to her old permanent duty station (PDS), but went on leave, and at the conclusion of her leave, she returned to the new installation and reported for duty. The member was initially paid for the off-installation lodging, but that amount (\$1,887.71) was collected from the member's account after she reported for permanent duty when her finance records were reviewed by officials at the new PDS. The member received \$722.80 as a temporary lodging expense which was erroneously paid to the member instead of being set off against her debt.

Discussion

Our Office must render decisions based on applicable statutes, regulations, and prior administrative decisions. Volume 1 of the Joint Federal Travel Regulations (JFTR) is the implementing regulation for travel entitlements for uniformed service members under title 37, United States Code, Chapter 7, including allowances in connection with PCS travel, and as such, it has the force and effect of law. *See* DOHA Claims Case No. 04042602 (May 6, 2004). In interpreting the JFTR in this instance, we are performing a quasi-judicial function, and as such, we are not at liberty to set aside the interpretation given to it by the officers or agency charged with its administration (DFAS and the Air Force in this instance). That interpretation has controlling weight unless it is plainly erroneous or inconsistent with the language of the regulation. We give great deference to the agency's interpretation, *i.e.*, we need not find that the agency's construction is the only possible one or the one that we would have adopted in the first instance, but only that it is a reasonable interpretation. *See* the decision of the Comptroller General in B-222666, Jan. 11, 1988 (citing *Belco Petroleum Corp. v. FERC*, 589 F. 2d 680, 685 (D.C. Cir. 1978) and other decisions therein).

Our research confirms that the DFAS/Air Force interpretation of the JFTR, disallowing the member's claim, is reasonable and is supported by the language of the JFTR and prior decisions of the Comptroller General. Volume 1 of the JFTR ¶ U4102-D provides in relevant part: "Except as [otherwise indicated], per diem is not payable at the old or new PDS for TDY enroute ICW PCS travel. This applies even if the member vacated the permanent QTRS at the old PDS and lodged in temporary QTRS during TDY." *See* 1 JFTR ¶ U4102-D, updated to C. 270 (June 1, 2009). *Compare* the Comptroller General's decision in B-185851, Apr. 28, 1976. Our decision in this case is dispositive of the member's legal claim, and does not affect other remedies that may be available to her.

Conclusion

The member's claim is disallowed, and the appeal and initial determinations are affirmed. Under ¶ E7.15.2 of Department of Defense Instruction 1340.21 (May 12, 2004), this is the final administrative action of the Department of Defense in this claim.

Signed: Michael D. Hipple

Michael D. Hipple
Chairman, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin
Member, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board