



**DEPARTMENT OF DEFENSE  
 DEFENSE LEGAL SERVICES AGENCY  
 DEFENSE OFFICE OF HEARINGS AND APPEALS  
 POST OFFICE BOX 3656  
 ARLINGTON, VIRGINIA 22203-1995**



DATE: January 7, 2026

	)	
In Re:	)	
[REDACTED]	)	Claims Case No. 2024-WV-042402.2
	)	
Claimant	)	

**CLAIMS APPEALS BOARD  
 RECONSIDERATION DECISION**

**DIGEST**

When a member is ordered to temporary duty with per diem, and it is later determined that the member is not entitled to per diem, waiver under 32 U.S.C. § 716 is appropriate only for the amounts actually expended in reliance on the erroneous authorization.

**DECISION**

A member of the U.S. Air National Guard requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2024-WV-042402, dated July 28, 2025.

**Background**

The member was residing in Indiana. On April 22, 2021, the member received orders for training at a squadron in the same state for the period May 1, 2021, through September 20, 2021. On May 26, 2021, a temporary duty (TDY) travel authorization in connection with her training orders was issued authorizing the member per diem. During the period May 31, 2021, through September 28, 2021, the member received \$8,288.89 in partial special payments for per diem. However, after a reconciliation of the member’s travel claim, it was determined that since the member commuted daily from her home to her TDY station, she was not entitled to per diem for meals. She was only entitled to receive \$188.34 (\$105.84 for mileage and \$82.50 for per diem for the first and last day of her travel). Therefore, the member was placed in debt in the amount of \$8,100.55 (\$8,288.89 minus \$188.34) for the overpayment of per diem.

The member requested waiver of the debt and the Defense Finance and Accounting Service (DFAS) denied waiver on the basis that information as to whether the member was entitled to receive per diem was available for her in the Joint Travel Regulation (JTR).

On appeal, the DOHA adjudicator explained that for travel advance payments to be considered erroneous and subject to waiver consideration: (1) the advances must be erroneously authorized and (2) the member must actually spend the advances in reliance on the erroneous authorization. The adjudicator further explained that the waiver relief is only appropriate to the extent the member is indebted to the government for repayment of the amount advanced after the advances have been applied against legitimate expenses. The adjudicator stated that in the waiver adjudication process of a travel advance, the question of detrimental reliance must be considered carefully, and as a general rule, the presumption is that expenses incurred in accordance with erroneous orders were made in reliance on those orders. The adjudicator found that the member was properly paid basic allowance for subsistence (BAS) in the amount of \$1,932.50 during the period May 2021 through September 2021. The adjudicator determined that since BAS and the meals portion of per diem are essentially the same allowance, the member received two meals entitlements (\$8,100.55 in special partial payments and \$1,932.50 in BAS) for the same period of time. The adjudicator noted that since the record did not contain any documentation reflecting that the member used the \$8,100.55 in special partial payments for meals, collection of the overpayment would not be against equity and good conscience, nor contrary to the best interest of the United States. The adjudicator concluded that although the member's debt was due to an administrative error in the member's travel authorization, waiver of the per diem debt is not appropriate because there was nothing in the record to indicate that the member used the overpayment of per diem for its intended purpose, especially since the member was paid BAS for meals for the duration of her orders.

In the member's reconsideration request, she requests her debt be repaid by the authorizing official and/or finance office responsible for the erroneous travel authorization. She cites to Volume 3 of Department of Defense Instruction 5154.31, *Defense Travel Management Office*, which states that the authorizing official has unlimited pecuniary liability for errors. She states that when she raised this issue with her finance officer after the establishment of her debt, she was told that repayment of the debt was always first sought from the member. She attaches additional documentation in support of her waiver request, including her bank records which she states details her purchases made at food establishments and grocery stores during her travel in 2021.

## **Discussion**

Our authority in this case is restricted to a consideration of whether the member's debt may be waived under 32 U.S.C. § 716. Under that statute we have the authority to waive repayment of erroneous payments of travel expenses to a member if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member. The standards for waiver do not permit waiver simply because the government made an administrative error. *See* Enclosure 4 of Department of Defense Instruction 1340.23 (February

14, 2006). In the case of erroneously authorized travel payments, the member must have spent the payments in reliance on the erroneous authorization. *See* DOHA Claims Case No. 2017-WV-062902.2 (February 15, 2019). The burden is on the member to provide documentary evidence as to the expenditure of the money.

As a preliminary matter, we will address the member's insistence that the authorizing official bear the liability for the overpayment. Our office has consistently held that the government is not liable for the erroneous actions of its officers, agents or employees, even though committed in the performance of their official duties. *See* DOHA Claims Case No. 2012-WV-112603.2 (February 11, 2013); and DOHA Claims Case No. 07041204 (April 25, 2007). In addition, a member's entitlement to travel allowances cannot be increased by the erroneous information provided by government employees. *See* DOHA Claims Case No. 2013-WV-021401.2 (August 25, 2014); and DOHA Claims Case No. 2013-WV-022009.2 (March 11, 2014).

Per diem is intended to reimburse a member for the lodging, meals, and incidental expenses incurred when the member is not living at home. In this case, the adjudicator specifically detailed how the member was paid a total of \$1,932.50 for BAS during the period May 2021 through September 2021. The adjudicator found that since the member properly received BAS to cover the costs of meals, she cannot be said to have expended that amount in detrimental reliance on the erroneous authorization of per diem. The bank statements submitted by the member for the period May 2021 through October 2021, do list debit payments for coffee purchases, meals in food establishments, and grocery purchases. However, the grocery store purchases and many of the meals in food establishments were made in the location of the member's residence, not her temporary duty location. In addition, the amount the member paid for meals in food establishments in the city of the member's temporary duty location totaled approximately \$640.00. Since the member received \$1,932.50 in BAS, she has not shown that she expended any additional funds in excess of the amount already provided to her for her meals. *See* DOHA Claims Case No. 05030706 (March 31, 2005). Therefore, the adjudicator reasonably concluded that collection of the claim would not be against equity and good conscience. We find no error in the adjudicator's appeal decision.

## Conclusion

The member's request for reconsideration is denied, and we affirm the appeal decision dated July 28, 2025. In accordance with Instruction 1340.23 ¶ E8.15, this is the final administrative action in this matter.

SIGNED: Catherine M. Engstrom

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Catherine M. Engstrom  
Administrative Judge  
Chair, Claims Appeals Board

SIGNED: Michelle P. Tilford

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Michelle P. Tilford  
Administrative Judge  
Member, Claims Appeals Board

SIGNED: David F. Hayes

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David F. Hayes  
Administrative Judge  
Member, Claims Appeals Board