



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2021-00452-2

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request to modify the following orders to include funding for reimbursement of unpaid temporary duty (TDY) Joint Travel entitlements (i.e. per diem and lodging):

- a. *Work-Product* Military Personnel Appropriation (MPA) Contingency, 120 days, 1 Oct 13 – 28 Jan 14 (M4S ID *Work-Product* Order Tracker *Work-Product*)
- b. *Work-Product* MPA Contingency, 123 days, 29 Jan - 31 May 14 (M4S ID *Work-Product* Order Tracker *Work-Product*)
- c. *Work-Product* MPA Contingency, 58 days, 1 Jun - 28 Jul 14 (M4S ID *Work-Product* Order Tracker *Work-Product*)
- d. *Work-Product* MPA Contingency, 59 days, 29 Jul - 25 Sep 14 (M4S ID *Work-Product* Order Tracker *Work-Product*)
- e. *Work-Product* MPA Contingency, 14 days, 12 Dec - 25 Dec 14 (M4S ID *Work-Product* Order Tracker *Work-Product*)
- f. *Work-Product* MPA Contingency, 33 days, 26 Mar - 27 Apr 15 (M4S ID *Work-Product* Order Tracker *Work-Product*)

RESUME OF THE CASE

The applicant is a retired Air Force Reserve lieutenant colonel (O-5).

On 6 Oct 21, the Board considered and partially granted his request to modify Reserve Order *Work-Product* for reimbursement of unpaid TDY Joint Travel entitlements. While the Board noted the recommendation of AFRC/FM against correcting the record, the Board found a preponderance of the evidence substantiated the applicant's contentions in part. Specifically, the data reflected in the official MPA orders was sufficient to justify granting the applicant's request

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for Joint Travel Regulation (JTR) travel entitlements for those orders which had not exceeded the time limits under 31 U.S.C. Section 3702. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore found no basis to recommend granting that portion of the applicant's request.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit E.

On 10 Aug 22, the applicant requested reconsideration of his request to modify his MPA orders for reimbursement of unpaid TDY Joint Travel entitlements. He again contends he should be reimbursed for all travel and per diem funds associated with his MPA orders. In the previous case, the Board used the wrong paragraph under 31 U.S.C. Section 3702 (b) (1), which used a six-year lookback as grounds to deny JTR travel reimbursement. Since his MPA orders were in support of Wartime Contingency for military duty to fly drones in the combat zone, paragraph (b) (2) should have been used instead of paragraph (b) (1). Per 31 U.S.C. Section 3702 (b) (2), when the claim of a member of the armed forces accrues during war or within five years before war begins, the claim must be received within five years after peace is established or within the period provided in paragraph (1) of this subsection, whichever is later. The United States withdrew from Afghanistan on 30 Aug 21 and from Iraq on 9 Dec 21. He has five additional years until 30 Aug 26 to file a claim since his orders were for MPA in support of Wartime Contingency to pilot drones over both Afghan and Iraq combat zones as an armed forces combatant.

If the Board insists on using 31 U.S.C. Section 3702 (b) (1) with a six-year lookback, then the Board should use the date he originally made a claim of error with his unit on 1 Oct 13. Per 31 U.S.C. Section 3702 (b) (1), a claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within six years after the claim accrues. His unit did not respond to his inquiries in writing until 21 Aug 15 and he continued to correspond with this unit to try to correct the error to no avail. The date his original request was made to correct MPA orders from fiscal year (FY) 16, 17 and 18, BC-2019-01030, could also be used which was 26 Feb 19.

The applicant claims he submitted a response to the AFRC/FM advisory opinion on 12 Aug 21, which was never seen by the previous Board. In this response, he contends he was working in a hostile work environment and did not volunteer to forfeit his rights to have his JTR travel benefits reimbursed. Furthermore, the statement "uncorroborated personal observations are not grounds to reopening a case" is false. He submitted three statements of corroborated personal observations which gave an explanation of why this military service was not volunteer duty as asserted by his unit and why filing a claim had to be delayed.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) copy of 31 U.S.C. Section 3702; (2) email correspondence with his unit regarding the correction of his MPA orders; (3) rebuttal response from the previous case; and (4) witness statements corroborating his claims.

The applicant's complete submission is at Exhibit F.

AIR FORCE EVALUATION

AFRC/JA recommends granting the applicant's request finding evidence of an error or injustice. The applicant's orders were in support of a named campaign, Operation ENDURING FREEDOM, which was a part of the greater Global War on Terror that did not end until 30 Aug 21. The applicant has five years from 30 Aug 21, to make his claim against the government. Even when viewing in the light least favorable to the applicant, his request for the orders to be modified back in 2018 supports the applicant's timely claimed reimbursement for his travel and per diem allowances under either paragraph of the statute.

Upon review of all the supporting documents provided for the advisory opinion, AFRC/JA finds three main questions at issue: (1) when did the claim accrue; (2) when did the applicant present his claim against the government; and (3) what is the proper paragraph to utilize under 31 U.S.C. Section 3702.

1. When did the claim accrue? The legal definition of accrue is the accumulation of interest, income, or expenses. When a legal cause of action or legal claim comes into existence. AFRC/JA opines the applicant was aware he was entitled to travel and per diem as the orders were cut, therefore finds his claim accrued at the conclusion of each individual completed order.

2. When did the applicant present his claim against the government? 31 U.S.C. Section 3702(b)(1) states a claim against the Government must contain the signature and address of the claimant or an authorized representative and be received by the official responsible for settling the claim or by the agency that conducts the activity from which the claim arises. The applicant's request for relief contains an e-mail sent on 28 Dec 18 by the Director of Operations, requesting pertinent M4S authorizations for the applicant be modified to authorize travel entitlements (per diem and lodging). As the Director of Operations, AFRC/JA finds he was an authorized representative and was seeking to have the orders of the applicant modified so the applicant could receive travel entitlements. This e-mail is well within six years of the end of the first set of orders, dated 28 Jan 14, and thus all the orders would fall within the statute of limitations when using the date of the e-mail as the "lookback" date.

3. What is the proper paragraph to utilize under 31 U.S.C. Section 3702? There are two possible citations that can use: 31 U.S.C. Section 3702(b)(1), which directs a claim must be received within six years of accrual; or 31 U.S.C. Section 3702(b)(2), which directs when a claim of a member of the armed forces accrues during war or within five years before war begins, the claim must be received within five years after peace is established, or within six years of accrual, whichever is later. Although Operation ENDURING FREEDOM ended on 28 Dec 14, this campaign was a part of the Global War on Terror, which continued until 30 Aug 21, when U.S. troops withdrew from Afghanistan, thus officially ending 20 years of war.

The complete advisory opinion is at Exhibit G.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 18 Oct 23 for comment (Exhibit H), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFRC/JA and finds a preponderance of the evidence substantiates the applicant's contentions. Specifically, the Board finds the applicant's orders were in support of the Global War on Terror which ended on 30 Aug 21; therefore, he had five years after this date to submit his claim per 31 U.S.C. Section 3702(b)(2). Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to the applicant be corrected to show his travel distance was beyond commute and he was authorized benefits in accordance with the Joint Travel Regulation, while called to active duty under the following orders, for the periods specified:

- a. Reserve Order [Work-Product] dated 23 September 2013, for a period of 120 days, 1 October 2013 – 28 January 2014.
- b. Reserve Order [Work-Product] dated 3 January 2014, for a period of 123 days, 29 January 2014 – 29 May 2014.
- c. Reserve Order [Work-Product], dated 14 April 2014, for a period of 58 days, 1 June 2014 – 28 July 2014.
- d. Reserve Order [Work-Product] dated 2 June 2014, for a period of 59 days, 29 July 2014 – 25 September 2014.
- e. Reserve Order [Work-Product] dated 8 December 2014, for a period of 14 days, 12 December 2014 – 25 December 2014.
- f. Reserve Order [Work-Product] dated 12 March 2015, for a period of 33 days, 26 March 2015 – 27 April 2015.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2020-01378-2 in Executive Session on 21 Jun 23 and 20 Dec 23:

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Work-Product [Redacted] Panel Chair
Work-Product [Redacted] Panel Member
Work-Product [Redacted] Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 6 Oct 21.
- Exhibit F: Application, DD Form 149, w/atchs, dated 10 Aug 22.
- Exhibit G: Advisory Opinion, AFRC/JA, dated 13 Oct 23.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Oct 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

12/22/2023

X *Work-Product* [Redacted]

Work-Product [Redacted]

Board Operations Manager, AFBCMR
Signed by: USAF