



Comptroller General  
of the United States

Washington, D.C. 20448

154442

## Decision

**Matter of:** Major Jacob N. Shepherd III, USAF--Claim for Retroactive  
Payment of Overseas Housing Allowance

**File:** B-260480

**Date:** May 5, 1995

### DIGEST

A member stationed in Germany was receiving Overseas Housing Allowance (OHA) at a rate which did not cover his housing expenses. After he submitted information on his expenses, the Per Diem, Travel and Transportation Allowance Committee amended the Joint Federal Travel Regulations (JFTR) to allow a higher OHA rate for his duty station. In the absence of error, the amendment to the JFTR cannot be applied retroactively. The mere fact that the JFTR were amended is not indicative of error.

### DECISION

We have been asked to render a decision regarding the claim of Air Force Major Jacob N. Shepherd III for retroactive payment of Overseas Housing Allowance (OHA). We affirm the Claims Group's denial of his claim.

Major (then Captain) Shepherd was an exchange officer with the German Air Force at Porz-Wahn Air Base (Cologne). In August 1990, he moved into privately owned leased housing at this location. This duty station was classified for OHA purposes in volume 1 of the Joint Federal Travel Regulations (JFTR), appendix K, in a locality code for "other locations" in North Rhine Westphalia. The allowance provided for accommodations in the "other locations" category was about \$165 less per month than Major Shepherd paid for the accommodations he leased. When he learned in 1992 that allowances can be adjusted upward with appropriate substantiation, he formally requested a higher OHA and submitted relevant information on his housing expenses to support his request. The Per Diem, Travel and Transportation Allowance Committee (Committee), which administers the JFTR, removed the Porz-Wahn area from the "other locations" category, designated it as a separate area, and set an allowance for it that was consistent with Major Shepherd's full cost. The committee made its action effective as of October 1, 1992, so that the adjustment was prospective only.

Major Shepherd contends that by changing the OHA rate for his duty station the Committee admitted that the prior rate was in error and that the increase in OHA which

became effective in October 1992, should therefore be made retroactive to August 1990. He cites prior Comptroller General decisions in support of his position.

Under 37 U.S.C. § 405, members stationed overseas may be entitled to OHA to assist in defraying the average excess housing costs certain members may experience while on assignment outside the United States. Implementing regulations are found in 1 JFTR para. U9100, and the amount payable for each duty station is listed in appendix K of the regulation. The Committee regularly recalculates and adjusts the amount payable for each duty station based on reports of housing costs which it receives, and appendix K is therefore amended regularly.

Amendments to regulations generally apply only prospectively. We applied that principle in our decision Housing Allowances--Hendon, England, B-205237, Mar. 15, 1982. That decision involved members living in quarters controlled by the British government, which in May 1981 raised the rent for the quarters effective April 1, 1981. The Committee raised the members' OHA effective June 24, 1981. The increase could not be made retroactive in the absence of an error, even though the members' OHA was inadequate for the intervening period.

The present situation is analogous to that in B-205237, *supra*. Although the OHA Major Shepherd received may not have entirely covered his expenses, the change in the OHA rate for his duty station may not be made retroactive in the absence of error.

While Major Shepherd argues that the Committee's modification of his OHA in response to the housing information he submitted is an admission of error on the Committee's part, we see no indication of error. The OHA rates in the JFTR are changed frequently, and the changes by themselves are not indicative of error.

Two of the decisions that Major Shepherd calls to our attention are distinguishable from his situation and therefore do not apply. In both cases, errors were made. In 56 Comp. Gen. 1015 (1977), station housing allowances in Spain were decreased after a devaluation of the Spanish peseta. One group of members was unaffected by the devaluation because they paid most of their housing expenses in United States currency. Because the reduction of allowances as to that group was an administrative error, the reduction was corrected retroactively.

In Specialist Fifth Class Bruce O. Eagerland, USA, B-192040, Aug. 7, 1978, a station housing allowance for a particular duty station was deleted from the Joint Travel Regulations (JTR), predecessor of the JFTR, based on erroneous information that no military personnel were stationed there. We allowed retroactive reinstatement of the allowance because the deletion was based on erroneous information.

Of the decisions that Major Shepherd calls to our attention, 32 Comp. Gen. 315 (1953) is the most analogous to his situation. Effective November 1951 a set of station per diem

rates was established in which rates within the corporate limits of Manila were higher than in the rest of the Philippines. The Committee subsequently reexamined the cost data and determined that the cost of living in the Manila suburbs was virtually identical with that within Manila itself. The Committee amended the allowance rates accordingly, but we did not allow retroactive adjustment. We said that while the rate set as of November 1, 1951, may have reflected a cost analysis which was not as comprehensive as it could have been, the Committee's action did not constitute an error which would justify retroactive amendment of the JTR.

Here, the record contains no evidence that Major Shepherd's unique location was erroneously placed in the "other locations" category. Nor is there evidence that the initial amount allowed Major Shepherd was not the correct starting amount for allowances in this category. The Committee followed standard procedures in making both determinations. Thus we are unable to see in the Committee's actions an error which would justify retroactive amendment of the JFTR and retroactive payment of increased OHA to Major Shepherd. The JFTR provides for a process of continual adjustment of allowance amounts. In this case, the process worked as designed. Once the Committee received information it could use to substantiate an adjustment, it did so. No error is evident.

In sum, when the Committee amended the JFTR to designate Porz-Wahn Air Base (Cologne) as a separate locality and to increase its OHA rate in response to data submitted by Major Shepherd, the Committee's action was a routine action without evidence of error. Therefore, the amendment may be applied only prospectively. See B-205237, SUPRA.

Accordingly, Major Shepherd's claim is denied, and the Claims Group's settlement is affirmed.

/s/ Seymour Efros  
for Robert P. Murphy  
General Counsel