



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-149196

3/277
August 21, 1973

Mr. Donald E. Reed
6260 Crestview Lane
Forest Park, Georgia 30050

Dear Mr. Reed:

We refer to your recent letter, received here June 4, 1973, requesting review of our decision B-149196, dated July 6, 1962, which sustained the disallowance of your claim for transportation allowance for the travel of your dependents from Barstow, California, to Knoxville, Tennessee, prior to orders of January 10, 1962, which released you from active duty with the U.S. Army. This Office has previously reconsidered your present claim in our decision B-149196, dated April 2, 1963, copy enclosed, wherein we affirmed our decision of July 6, 1962. We have also received an inquiry from the Honorable Howard H. Baker, Jr., United States Senate concerning your claim.

Briefly, the record shows that you were ordered to active duty for one year effective October 9, 1961, under the provisions of Public Law 87-117, 75 Stat. 242, with assigned station at Fort Irwin, California. On December 14, 1961, you requested release from active duty on the ground that you had been erroneously ordered to active duty. You were granted 12 days' ordinary leave on December 22, 1961, the purpose of which was to move your family to Knoxville, Tennessee. You state in this regard that this move was made under emergency conditions due to the high cost of living in the area. Your dependents departed Barstow, California, on December 22, 1961, and arrived at Knoxville, Tennessee, on December 25, 1961. Their travel was therefore performed prior to the issuance of Special Orders No. 9, U.S. Army Armor and Desert Training Center, Fort Irwin, California, dated January 10, 1962, releasing you from active duty on that same date.

We disallowed your claim for reimbursement for your dependents' travel in our decision of July 6, 1962, on the basis of paragraph 7000-9 of the Joint Travel Regulations, in effect at that time which provided that transportation of dependents at Government expense is not authorized where the dependents depart the old station prior to the issuance of change-of-station orders and the voucher is not

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supported by a certificate of the commanding officer, or his designated representative, of the headquarters issuing the orders that the member was advised prior to the issuance of change-of-station orders that such orders would be issued. This latter proviso has reference to instances where all provisions and requirements of the orders to be issued have been finally determined and all that remains to be done is the writing of the orders. See B-160968, April 14, 1967, copy enclosed.

The main contention presented in your recent letter appears to be the same one that you had raised and which was considered in our prior decision referred to above, i.e., that you were officially notified of your pending release from active duty at the time you were granted leave on December 22, 1961, by virtue of what the adjutant general of your station had told you at that time. In a certificate dated February 28, 1962, the adjutant general states, however, that at that time action on your request for release from active duty was pending with a probability that it would be approved, and that at the time you departed on leave with your wife, you were advised that permanent change-of-station orders could not be issued until approval was received from the Department of the Army.

You assert that the above statement is false, and that in fact the adjutant general told you that you were to receive orders for discharge in the near future, and that you could move your family at that time, and then apply for transportation allowance for their travel after your discharge orders were issued.

Notwithstanding the apparent conflict concerning what the adjutant general had told you on December 22, 1961, the first official indication that you may have been erroneously ordered to active duty was the issuance of DA Message 585080, dated December 27, 1961, occurring after your dependents' travel to Knoxville, Tennessee. This message was the authority for the release of certain reservists under which your release orders were issued. A definite administrative determination to release you from active duty pursuant to the authority of the message apparently was not made until several days afterwards. Any information which you may have received prior to that time relating to your release from active service must be considered as mere general information, which is not sufficient to meet the requirements of paragraph 7000-9, JTR.

With respect to your statement that your dependents' travel was performed under emergency conditions due to the high cost of living in the area, such circumstances do not provide a basis for deviation

from the requirement discussed above. See B-178347, July 9, 1973, copy enclosed. Accordingly, our decision of July 6, 1962, is again sustained.

In your letter of May 20, 1973, to the Honorable Howard K. Baker, Jr., United States Senate, you indicate that you are entitled to reimbursement for the loss of wages you incurred as a result of erroneous recall to active duty. There appears to be some question as to whether or not you were in fact erroneously ordered to active duty by orders issued on September 14, 1961. However, even if you were erroneously ordered to active duty service there exists no statutory authority or judicial precedent to provide a basis for payment for loss of civilian wages by the Government.

Presumably you have received all the pay and allowances to which you were entitled under governing laws and regulations during the entire period of your active duty. Thus, your claim for loss of wages is in the nature of a claim for damages and hence, one sounding in tort. Generally, the Federal Government is not liable for torts committed in its services by its officers and employees unless it consents to such liability. Such consent has been given in regard to certain tort claims by the Federal Tort Claims Act, 28 U.S.C. 2671-2680. Under section 2672 thereof, authority is vested in the head of each Federal agency to consider and settle any claim for money damages against the United States for injury or loss of property caused by the negligent or wrongful act or omission of an employee of the agency while acting within the scope of his employment, under circumstances where the United States, if a private person, would be liable under the law of the place where the act or omission occurred. Our Office is precluded from considering your present claim under the above law since it arose by virtue of an activity of the Department of the Army, the agency having jurisdiction in the matter. However, we have found no judicial precedent which would serve as authority for favorable action by the Department of the Army on your claim for loss of wages. In this connection, see Small v. United States, 333 F. 2d 702 (1964).

Enclosed are the documents which accompanied your recent letter to this Office.

Sincerely yours,

Paul G. Dembling

For the
Comptroller General
of the United States