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

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JUN 26 1979

*[Entitlement of Navy Employee to Additional Per Diem
Incident to Attending School]*

The Honorable Glenn M. Anderson
House of Representatives

Dear Mr. Anderson:

Further reference is made to your correspondence on behalf of Mr. David M. De Los Reyes, an employee of the Department of the Navy, Long Beach Naval Shipyard, who questions the validity of his indebtedness to the United States and who claims entitlement to additional per diem incident to his attending Sonar Maintenance School in San Diego.

By travel order dated August 26, 1977, he was authorized travel expenses, including \$20 per diem during the period September 6, 1977, to March 4, 1978. On October 1, 1977, he was instructed to move into Government furnished quarters; however, due to an existing lease obligation, he did not do so until November 2, 1978. He understood that his per diem rate would continue to be \$20 including the cost of \$4 a day for Government quarters.

After returning to Long Beach, Mr. De Los Reyes was informed that his per diem should have been decreased by 50 percent during the time he occupied Government quarters excluding the amount paid for Government quarters. By notice of May 4, 1978, he was advised by the Navy Finance Office, Long Beach, California, that he was indebted in the amount of \$676.49 as his travel advance was in the amount of \$3,440.00 and his total entitlement for travel expenses, including per diem was \$2,743.51.

He objects to the reduction of his per diem by 50 percent during his occupancy of Government quarters. He was under the impression that his per diem would continue to be \$20 rather than \$10 plus the cost of Government quarters which was allowed.

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Our Claims Division disallowed Mr. De Los Reyes' claim for additional per diem on the basis that he was paid in accordance with the applicable regulations.

Paragraph C4552-2i(3) of Volume 2 of the Joint Travel Regulations (JTR) provides that for training programs of 120 days or more at one location, the per diem rate is 55 percent of the maximum allowable per diem rate of \$35 rounded to the next higher dollar. The \$20 per diem rate fixed by his travel orders accords with the JTR.

Section 853 of the Department of Defense Appropriations Act, 1978, Public Law No. 95-111, 91 Stat. 908, reads as follows:

"None of the funds appropriated by this Act or available in any working capital fund of the Department of Defense shall be available to pay the expenses attributable to lodging of any person on official business away from his designated post of duty, or in the case of an individual described under section 5703 of title 5, United States Code, his home or regular place of duty, when adequate government quarters are available, but are not occupied by such person." (Emphasis added.)

The Per Diem, Travel, and Transportation Allowance Committee of the Department of Defense issued implementing regulations. The regulations--change 146 to Volume 2 JTR--provides that payment may be made where, prior to October 1, 1977, the employee entered into a commitment for quarters which cannot be cancelled without a financial penalty. Paragraph C4552-2i(4) of the JTR effective October 1, 1977, provides that for any day where Government quarters are available, the otherwise applicable rate will be reduced by 50 percent. Additionally, the amount paid for Government quarters is reimbursed.

Mr. De Los Reyes initial per diem rate, was established in accordance with the applicable regulation and was reduced as required by the above cited law and implementing regulations. Since he was paid at the \$20 rate until he occupied Government quarters and his per diem was

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reduced from that rate thereafter as required by regulations, there is no basis for reimbursement of additional per diem. Any erroneous advice he may have been given as to entitlement to per diem during occupancy of Government quarters, comes within the rule established that the United States is neither bound nor estopped by the unauthorized acts of its agents. Any payments made under unauthorized actions are recoverable. Matter of Larry Jon Heglund, B-183633, June 10, 1975. Accordingly, the disallowance of his claim by our Claims Division is sustained.

Mr. De Los Reyes' indebtedness to the United States may not be waived. Section 5584 of title 5, United States Code (1976) authorizes the waiver of claims of the United States against a person arising out of erroneous payment of pay or allowances; however, the waiver of travel and transportation expenses and allowances is specifically excluded. We regret that a reply favorable to Mr. De Los Reyes is not possible.

Sincerely yours,

SIGNED ELMER B. STAATS

Comptroller General
of the United States