

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

FILE:

B-144304

DATE:

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MAR 30 1976

MATTER OF:

DIGEST:

Jack C. Stoller - Transfers - Travel and transportation expenses - Temporary lodging allowance

1. Civilian employee of Department of the Navy, transferred from Pearl Harbor, Hawaii, to Parris Island, South Carolina, effective July 18, 1965, claims travel and transportation expenses. He may not be paid such expenses since he was informed prior to travel that reimbursement of travel and transportation was not authorized and transfer was determined by Marine Corps officials to be for convenience of employee.
2. Civilian employee of Department of the Army is not entitled to payment of temporary lodging allowance since he was provided, and resided in, Government-owned quarters during entire period of time covered by claim for temporary lodging allowance and under such conditions allowance may not be paid.

This is a consideration of an appeal by Mr. Jack C. Stoller from two settlements of our Transportation and Claims Division (TCD) dated October 7, 1975, and October 17, 1975 (both Settlement Certificates numbered 1104108). The October 7, 1975 settlement disallowed Mr. Stoller's claim, presented to our Office by him in a letter dated April 9, 1975, for reimbursement of travel and related expenses incurred as a civilian employee of the Department of the Navy in connection with a transfer from Pearl Harbor, Hawaii, to Parris Island, South Carolina, effective July 18, 1965. The October 17, 1975 settlement disallowed Mr. Stoller's claim for payment of temporary lodging allowance for 60 days alleged to be due incident to a transfer to Saigon, Vietnam, effective March 3, 1967, as a civilian employee of the Department of the Army. Both of these settlements are sustained for the reasons set out below.

Concerning the claim for reimbursement of travel and related expenses in connection with the transfer from Hawaii to South Carolina,

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settled on October 7, 1975, the record indicates that while he was employed by the Department of the Navy at the U.S. Naval Shipyard, Pearl Harbor, Hawaii, Mr. Stoller applied and was selected for the position of Employee-Management Relations Specialist at the U.S. Marine Corps Recruit Depot, Parris Island, South Carolina. By letter dated June 9, 1965, Mrs. D. E. May, Civilian Personnel Officer in the Industrial Relations Section, U.S. Marine Corps Recruit Depot at Parris Island, informed Mr. Stoller that travel and shipment of household goods would be at Mr. Stoller's own expense. The Commanding General, Marine Corps Recruit Depot, Parris Island, stated in a letter to the Commanding Officer, Navy Regional Finance Center, Washington, D.C., that "t/he relocation was * * * at Mr. Stoller's convenience and was not in the interests of the Government." He also stated the fact that no transportation agreement was completed by Mr. Stoller was evidence that reimbursement for travel and transportation expenses was never contemplated. Mr. Stoller, in his letter to our Office dated April 9, 1975, denied that the transfer was initiated at his convenience.

At the time of Mr. Stoller's transfer, authority for the payment of travel and transportation expenses of civilian employees of the United States transferred in the interest of the Government was in section 73b-1(a), title 5, United States Code (1964). Section 1.5 of Bureau of the Budget Circular No. A-56, as amended effective July 1, 1964, the regulation promulgated under the cited statute and in effect at the time of Mr. Stoller's transfer, read in pertinent part as follows:

"Payment of expenses. The travel and transportation expenses allowable under these regulations, when authorized or approved by such subordinate official or officials as the head of the department may designate, shall be paid in case of transfer of an employee from one official station to another, including transfer from one department to another, for permanent duty, but in no case in which the transfer is primarily for the convenience or benefit of the employee or at his request." (Emphasis added.)

Paragraph 5-7 of Navy Civilian Personnel Instruction 4650 (March 9, 1962), in effect at the time Mr. Stoller requested the transfer, provides in pertinent part:

"Transfers effected at the request of, and primarily for the convenience or benefit of, employees cannot be made

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at Government expense. However, the retention by the Navy of a qualified employee at any activity where his services are needed is considered to be primarily of benefit to the Navy, and the fact that an employee initiates the request for transfer is not the deciding factor."

Paragraph C4100-1 of volume 2, Joint Travel Regulations (1965), in force at the time Mr. Stoller's transfer was effected, provided in pertinent part as follows:

" * * * A permanent change-of-station movement will not be authorized at Government expense when it is primarily for the benefit of the employee or at his request. If the movement is determined not to be in the interest of the Government, the employee will be informed prior to the movement as to his responsibility for payment of travel and transportation expenses."

Mr. Stoller admitted in his letter of April 9, 1975, that no travel orders were ever issued authorizing payment of travel and transportation expenses incident to his transfer. Moreover, apparently in anticipation of the notice requirement of the Joint Travel Regulations, the Civilian Personnel Officer at Parris Island, by letter dated June 9, 1965, clearly informed Mr. Stoller that he would be responsible for paying his own travel and transportation expenses. Although Mr. Stoller contends that the transfer was in the interest of the Government, officials at Parris Island do not agree. In view of this and since the applicable law and regulations require that expenses of transfer of official station be authorized or approved by the appropriate officials before the Government assumes liability for such expenses, there is no legal basis upon which the claim may be paid. See B-151699, June 26, 1963.

Regarding the claim for payment of temporary lodging allowance, denied on October 17, 1975, the record shows that Mr. Stoller was assigned to duty with Head Quarters, United States Army, Vietnam, effective in March 1967. In a letter to Mr. Stoller dated January 18, 1967, the Personnel Officer at the U.S. Army Engineer District, Jacksonville, Corps of Engineers, Jacksonville, Florida, stated that Government quarters would not be available in Vietnam and that temporary lodging allowance and living quarters allowance were authorized. Moreover, the Standard Form 50, dated February 27, 1967, prepared incident to that assignment indicated that Mr. Stoller was eligible for overseas

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allowances under DA CPR T7 [Department of the Army Civilian Personnel Regulations T7]. Mr. Stoller stated in his letter of June 24, 1975, that upon arrival at his new duty station he had requested the temporary lodging allowance, but his immediate supervisor had refused that request without explanation. He further stated that he was forced to reside in Government-owned lodging that was unsanitary, overcrowded, and generally inadequate. His claim, therefore, is for temporary lodging allowance for the period extending from March 7, 1967, to April 10, 1967, the period commencing with his arrival in Vietnam and ending on the date he started receiving living quarters allowance.

Authority for the payment of living quarters allowances is found in 5 U.S.C. § 5912 (Supp III, 1965-1967), formerly 5 U.S.C. § 118a, which provides in pertinent part:

"Under regulations prescribed by the head of the agency concerned and approved by the President, an employee who is a citizen of the United States permanently stationed in a foreign country may be furnished, without cost to him, living quarters, including heat, fuel, and light, in a Government owned or rented building. * * *

By subsection 1(c) Executive Order 10011, dated October 22, 1948, the Secretary of State was authorized and directed to exercise the statutory authority vested in the President to approve regulations prescribed by heads of departments governing the granting of quarters allowances to all civilian officers and employees of the Government on foreign duty. Executive Order 10903, dated January 9, 1961, revoked Executive Order 10011 but stated in subsection 11(b) that existing regulations prescribed by the Secretary of State pursuant to authority granted by Executive Order 10011 would remain in effect until superseded in pursuance of Executive Order 10903. Paragraph 112 of the Standardized Regulations (Government Civilians, Foreign Areas) (September 1963), as approved by the Secretary of State and in effect during the period here involved, stated:

"The quarters allowance is intended to reimburse an employee for substantially all of his costs for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to him at his post without charge. * * *

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In addition, paragraph 123.2b of the Standardized Regulations (Government Civilians, Foreign Areas) in effect during the period here involved provided that a temporary lodging allowance granted upon first arrival at a new post shall terminate as of the date that expenses for temporary lodging are no longer incurred. A similar limitation is prescribed in connection with living quarters allowances (LQA) under the terms of paragraph 132.43 of the Standardized Regulations (Government Civilians, Foreign Areas).

Furthermore, under section 2, paragraph 2-1, Department of the Army Civilian Personnel Regulations T7, in effect during the period here involved, a temporary lodging allowance is authorized only when Government living quarters are not available.

It will be observed that the payment of allowances for quarters is precluded during any period for which Government quarters on the base were determined to be available. Since Mr. Stoller did in fact occupy Government-owned quarters in spite of the fact that he had been advised prior to his departure for Vietnam that such quarters were unavailable, he may not collect a temporary lodging allowance. Mr. Stoller alleges that the quarters provided to him were inadequate. However, we have held that the adequacy or suitability of Government quarters for Federal employees is a matter properly to be determined by the head of the department or agency concerned. The area or location of the assignment, the duration thereof, and the nature of the duties prescribed are factors to be considered in determining whether Government quarters are adequate and habitable. B-125902, December 22, 1955. The Department of the Army has not made a determination that the quarters provided Mr. Stoller were inadequate. Therefore, in view of the above-cited regulations and our decision B-125902 of December 22, 1955, no basis exists for the payment of the temporary lodging allowance.

Accordingly, the two settlements issued by our Transportation and Claims Division on October 7, 1975, and October 17, 1975, disallowing respectively Mr. Stoller's claims for transportation and travel expenses incident to his transfer to Parris Island in 1965 and for temporary lodging allowance in connection with his transfer to Saigona in 1967 are sustained.

R.F.KELLER

Deputy] Comptroller General
of the United States