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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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B-189601

DEC 30 1977

FILE:

DATE:

Lieutenant Commander Joseph M. Browne, USN

MATTER OF:

DIGEST: Member who receives orders for temporary duty at the same location as his permanent duty station, is not entitled to per diem allowances during such temporary duty assignment even though he is required to vacate Government family housing during such temporary duty because the assignment did not involve departure from the permanent duty station and thus he did not enter into a travel status. Paragraph M4201-5, 1 JTR, may not be amended to provide for such payment since 37 U. S. C. 404(a) does not authorize payment of per diem when a member has not entered a travel status.

This action is in response to a letter, with enclosures, dated June 6, 1977, from the Disbursing Officer, USS Julius A. Furer (FFG-8), forwarded by the Chief of Naval Personnel, requesting an advance decision as to the legality of payment on a voucher submitted by Lieutenant Commander Joseph M. Browne, USN, [redacted], for per diem allowances in connection with a period of temporary duty performed at his permanent duty station. The request was forwarded by the Per Diem, Travel and Transportation Allowance Committee and assigned Control No. 77-23. It is indicated that the circumstances applicable to Commander Browne are also applicable to several other naval officers.

The question presented is whether travel per diem may be paid to a member of the uniformed services after he completes a period of training in permanent duty status and is assigned to a further short period of training at the same place based on the fact that he is required to vacate Government family housing which had been assigned to him prior to completion of the short period of training.

Commander Browne was permanently assigned to the Naval War College at Newport, Rhode Island, where he occupied student family housing (Government quarters). In June 1976 he was detached from the War College and ordered to the Surface Warfare School, Newport, Rhode Island, prior to reporting to permanent duty aboard the USS Furer. Inasmuch as incoming students for the next class at the War College required student family housing assignments, the

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member's occupancy of student housing was terminated. He apparently obtained non-Government housing in the Newport, Rhode Island area for the period August 13 through 20, 1976, but from August 20 through 27 he indicates that he occupied Government Bachelor Officer Quarters.

The member is requesting per diem allowances for the period August 13 through 27, 1976. However, he acknowledges that payment of per diem to personnel on a temporary assignment at the place of their previous permanent duty assignment is prohibited by the Joint Travel Regulations. Nevertheless, he submits that his situation constitutes a special case. He therefore recommends that paragraph M4201-5 of Volume I, Joint Travel Regulation (1 JTR) be revised so as to add pertinent language which would be applicable to his situation: (The addition suggested is underscored.)

"TRAVEL OR TEMPORARY DUTY PERFORMED WITHIN LIMITS OF PERMANENT DUTY STATION. No per diem allowance is payable for any travel or temporary duty performed within the limits of the permanent duty station other than as authorized for the day of arrival at or return to the permanent duty station. This restriction does not apply when members performing such temporary duty are required to vacate government quarters for the convenience of the government and in fact utilize temporary accommodations while performing such temporary duty."

He also requests that if the revision is approved, per diem be approved for himself and the other officers in the same circumstances.

Section 404 of title 37, United States Code (1970), provides that under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed under orders away from his designated post of duty regardless of the length of time he is away from that post. Regulations promulgated pursuant to that authority are contained in the Joint Travel Regulations.

Temporary duty is defined in Appendix J of those regulations as constituting duty at one or more locations other than the permanent station at which a member performs temporary duty under orders, which orders provide for further assignment, or pending further assignment, to a new permanent duty station or for return to the old permanent station upon completion of the temporary duty.

When a member is performing temporary duty as defined above, he is considered to be in a travel status, such status being the basis for entitlement to travel and transportation allowances. Paragraph M3050-I and 2, 1 JTR.

Appendix J, 1 JTR, defines a permanent duty station as being the post of duty or official station to which a member is assigned or attached for duty other than temporary duty or temporary additional duty, the limits of which will be the corporate limits of the city or town in which the member is stationed.

Under the provisions of paragraph M4201-5, 1 JTR, per diem is not authorized for any travel or temporary duty performed within the limits of the permanent duty station, with the exception of day of arrival at or return to the permanent duty station. Thus to be entitled to per diem allowances the member must have been in a travel status away from his permanent duty station.

In 50 Comp. Gen. 729 (1971) we held that if a member is detached from his permanent duty station under permanent change of station orders and thereafter proceeds to a temporary duty station, he enters a travel status only if the temporary duty location is outside the corporate limits of his old station. See also 50 Comp. Gen. 803 (1971).

We have consistently held that, for travel purposes, a member's permanent duty station does not change by virtue of his assignment to temporary duty at the place of his permanent assignment. Once a member arrives at the place where he is expected to perform most of his duties for a substantial period of time, his travel status and travel per diem entitlement is terminated, whether the duties he performs are those of his permanent assignment or of a temporary assignment and even though he performs duty at a specific location

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within the duty station other than the place at which he will perform his permanent assignment. 52 Comp. Gen. 751 (1973) and cases cited therein. See also, 44 Comp. Gen. 621 (1965). Further the member's permanent station, for travel purposes, remains at the same place until he leaves that station for a permanent assignment at another place. Assignments to temporary duty at the permanent station may not be considered as placing the member in a travel status. Decision B-184861, August 3, 1976, and decisions cited therein. Those rules are based upon statutory travel entitlements as provided by 37 U. S. C. 404(a) (1970) and similar provisions of prior laws. Therefore, the Secretaries of the Departments concerned are not authorized to modify them by regulation. Accordingly, the amendment to paragraph M4201-5, 1 JTR, suggested by the member may not be implemented.

In the present case, the member did not leave his old permanent duty station so as to be considered as entering a travel status since both the permanent and the temporary assignment were at Newport, Rhode Island. He indicates that he was required to occupy temporary commercial quarters for a limited period due to an administrative determination that he should vacate Government family housing before his final departure from Newport and because of the inability of the Navy to provide alternate Government housing for that period. While he may have incurred additional expense in the circumstances, there is no authority to pay him allowances predicated on the performance of temporary duty in a travel status. Accordingly, there is no authority to pay the travel per diem claimed.

It is noted, however, that paragraphs M4156-13 and M4500-2, 1 JTR, provide for payment of transportation expenses incurred in commuting to a temporary duty location within the limits of the permanent duty station. If the member has not been reimbursed such expenses an appropriate claim for such travel would be for consideration.

In addition, in accordance with section 403 of title 37 United States Code (1970) as implemented by Department of Defense Pay and Allowances Entitlements Manual (DODPM), Part 3, Chapter 2, a member with dependents who is entitled to basic pay is entitled to Basic Allowance for Quarters (BAQ) at prescribed rates when adequate Government quarters are not furnished for him and his dependents without payment of a rental charge. It is assumed that the members

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concerned were authorized BAQ after they vacated Government quarters.

For the reasons stated the travel voucher may not be paid and is retained here.

R. F. KELLOGG

Acting

Comptroller General
of the United States

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SUBSISTENCE

Per diem

Military personnel

At permanent post

SUBSISTENCE

Per diem

Military personnel

Headquarters

Prohibition against payment