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DECISION



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

PLM2

FILE: B-197888

DATE: November 18, 1980

MATTER OF: Staff Sergeant John H. Cotton, USA

DIGEST: An Army member claimed retroactive payment of basic allowance for subsistence (BAS) for a period during August 1973, through May 1978, contending that he had not received the allowance because of administrative error. The claim may not be allowed since there is no administrative report by the concerned Army command authorities establishing that the member was actually authorized BAS and, if he was so authorized, the circumstances which previously prevented payment.

Staff Sergeant John H. Cotton, USA, requests reconsideration of our Claims Division's April 17, 1979 denial of his [claim for payment of basic allowance for subsistence (BAS) for the period August 15, 1973, through May 25, 1978. Since the record does not establish conclusively that Sergeant Cotton was given authorization to mess separately for the period in question, or for what other reason payment was not made, we affirm the denial of his claim.

Sergeant Cotton applied on May 26, 1978, for retroactive payment of BAS effective August 15, 1973. He contended that he was receiving BAS when he was transferred from the 122nd Medical Detachment to the 97th General Hospital in the Frankfurt, Germany area, but that after the transfer he was not paid BAS due to administrative error. He indicates that he was not aware at the time that he was not receiving BAS. Prior to and during the period of the claim, he was living with his dependents in Government quarters under command sponsorship. In support of his claim he submitted statements from four former commanding officers that indicated they believed that he was entitled to mess separately with his dependents while under their command, but none of the statements give any indication why, if oral approval was given, such authorization was not confirmed in writing.

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Subsection 402(b)(2), title 37, United States Code, provides that an enlisted member is entitled to the BAS, on a daily basis, when permission to mess separately is granted.

Paragraph 30131a of the Department of Defense Military Pay and Allowances Entitlements Manual states that authorization to mess separately cannot cover retroactive periods. However, it also provides that this does not prevent payment of the BAS from the time of an oral authorization by proper authority if the oral approval of the member's request is promptly confirmed in writing.

Army Regulation 210-10, paragraph 7-1 (previously 6-1), provides that enlisted members residing with dependents are authorized to mess separately without individual authorization. The regulation further provides that the unit commander is to notify the servicing finance officer (by use of a form designed for that purpose) of each member with entitlement to BAS under that authority. There is no explanation in the record as to why Sergeant Cotton was not paid BAS during the period in question. That is, it is not indicated whether his unit commander forwarded his name as an eligible member for BAS to the finance officer, or whether for some reason he was not considered eligible.

Our decisions generally have held that retroactive written orders may be accepted as establishing that permission to mess separately was granted if it is shown that such written orders were issued in confirmation of verbal authorization issued by proper authority at or prior to the beginning of the period involved, and only if they were issued within a comparatively short period of time after the issuance of the verbal orders. Where such confirmatory orders are not promptly issued, retroactive payment of the subsistence allowance may not be made unless there has been full administrative disclosures of all the facts and circumstances which prevented confirmation. See B-169677, May 22, 1970, and compare B-183846, October 9, 1975.

The only written application for BAS in the record before us was verified and approved by the Deputy Community