



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lance Corporal J. F. Murphy, USMC

File: B-223425

Date: November 3, 1986

DIGEST

A Marine Corps member was stationed at Camp Lejeune, North Carolina. Cost-free government quarters were available to him there, and he was not eligible for a variable housing allowance (VHA). He traveled to Chicago, Illinois, where he spent 7 days in a leave status awaiting his final discharge. The applicable statute authorizes payment of VHA to service members "assigned to duty" in a high housing cost area in the United States; the allowance may not be paid on the basis of a service member's election to go to a high housing cost area for the purpose of taking leave rather than fulfilling a duty assignment.

DECISION

This action is in response to a request for an advance decision from Lieutenant Colonel M. K. Chetkovich, Disbursing Officer, Marine Corps Finance Center, on the question of whether a variable housing allowance (VHA) at the applicable rate prescribed for Chicago, Illinois, is payable to Lance Corporal J. F. Murphy, USMC, for the 7-day period from February 25 through March 3, 1986, on the basis of his election to stay in Chicago while on an authorized leave of absence during that period.^{1/} We conclude that VHA is not payable to him on that basis.

BACKGROUND

In February 1986 Corporal Murphy was assigned to Camp Lejeune, North Carolina, under a term of enlistment that was

^{1/} The request for an advance decision was forwarded here by the Per Diem, Travel and Transportation Allowance Committee after being assigned PDTATAC Control Number 86-13.

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due to expire on March 3, 1986. He had no dependents and was furnished government quarters; consequently, he was not authorized VHA at his duty station. During the period February 25 through March 3, 1986, however, Corporal Murphy was in Chicago in a leave-awaiting-separation status.

In a message to service finance centers dated April 2, 1986, the Per Diem, Travel and Transportation Allowance Committee interpreted the statutes and regulations controlling VHA as allowing a member in a leave-awaiting-separation status to be authorized the VHA rate, without offset, applicable at the location of the member while in a leave status where there was no old duty station VHA rate. The concerned disbursing officer notes that under this interpretation, Corporal Murphy would appear to be eligible for VHA at the rate applicable to Chicago for the period February 25 to March 3, 1986.

The disbursing officer questions the correctness of this interpretation, however, in light of our decision in Private Vaughn Desha, USMC, B-214731, September 4, 1984. There we held that a service member who was in confinement serving a court-martial sentence could not receive VHA since confinement under a court-martial sentence did not constitute a "duty" assignment within the meaning of the statute or regulations authorizing payment of VHA to a service member "assigned to duty in the United States" at a place determined to be a high housing cost area. The disbursing officer therefore asks--

"Is LCpl Murphy now entitled to VHA without offset on the basis of his status of leave awaiting separation?"

ANALYSIS AND CONCLUSION

Subsection 403a(a)(1) of title 37, United States Code, authorizes payment of VHA to a member of a uniformed service who is "assigned to duty in an area of the United States which is a high housing cost area with respect to that member." In the present case, government quarters were available to Corporal Murphy at no personal cost while he was assigned to duty at Camp Lejeune, and he had no entitlement to VHA. In our view, his taking of leave while awaiting discharge did not create an entitlement to VHA since he still maintained Camp Lejeune as his permanent duty station until the time of his discharge, and he was never "assigned to duty" in Chicago. In other words, Chicago did not become his

new permanent duty station simply because he chose to take his leave there. Therefore, his taking of leave did not affect his entitlement to VHA.

We find that this result is reenforced by provisions of the Joint Travel Regulations which implement the VHA statute, 37 U.S.C. § 403a. Paragraph M4550 of the regulations states, "A member's old permanent duty station is considered to be the permanent duty station for variable housing allowance purposes through the day prior to the day that the member reports at the new permanent duty station * * *." Since an individual on leave awaiting discharge will not have a new permanent duty station, the rates applicable at the old station would obtain until the individual's discharge.^{2/} We therefore conclude that Corporal Murphy is not entitled to VHA on the basis of his election to take leave in Chicago between February 25 and March 3, 1986.

for Milton J. Jordan
Comptroller General
of the United States

^{2/} See 48 Comp. Gen. 603, 604 (1969), where we stated, "We see no legal basis for now concluding that orders which direct a member to proceed to a place where no duty is required of him effect a change of permanent station." Clearly, leave orders authorizing an individual to proceed to his home of record or place of choice to await discharge while in a leave status would be orders "which direct a member to proceed to a place where no duty is required of him." Compare also Private Vaughn Desha, USMC, B-214731, supra.