



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Captain Raymond F. Heath, USAF - Request for Review of
Indebtedness

File: B-256663

Date: November 9, 1994

DIGEST

A member was ordered to perform temporary duty (TDY) away from his permanent duty station. Initially, he travelled under blanket TDY orders which provided for payment of per diem. While the member was on TDY, court-martial charges were preferred against him. He continued to perform military duties except on days when he attended the court-martial. Six months after the blanket TDY orders expired, but while the member was still on TDY, retroactive orders were issued altering the stated purpose of the member's travel to indicate that the travel was to attend his court-martial. The contention that his travel under the revised travel order was "disciplinary travel" for which payment of per diem would be prohibited is incorrect for two reasons. First, the member continued to performed military duty during the period in question. Second, retroactive travel orders cannot operate to decrease a member's entitlements because the entitlements vest when the travel is performed. In this case, payment of per diem for meals and incidental expenses is proper for periods during which the member performed military duties away from his permanent duty station. Payment is not proper for days on which he attended his court-martial.

DECISION

We have been asked to review the debt assessed against Captain Raymond F. Heath, USAF. The debt was assessed to recover advance payments of per diem made to Captain Heath while an investigation into alleged misconduct on his part was underway. Captain Heath was paid per diem under temporary duty (TDY) orders in effect for a portion of the period in question. He continued to be paid per diem under a revised order which extended his temporary duty through the conclusion of his court-martial. Because the record indicates that (a) Captain Heath was in a TDY status away from his permanent station for the entire period involved, and (b) he was performing military duty except for days when he returned to his permanent station and days when he participated in the court-martial proceeding, he should be allowed per diem for the entire period. This amount should be

reduced by any per diem he received while he was either at his permanent duty station or attending the court-martial. Accordingly, his debt is limited to any per diem paid to him during periods when he was at his permanent duty station or attending court-martial.

Captain Heath was commander of the Contingency Hospital at Donaueschingen, Germany. He was assigned to new duties at Ramstein, Germany, in February 1990 on TDY with the 377th Services Squadron when an investigation of his conduct at Donaueschingen was initiated. Captain Heath travelled to Ramstein on blanket TDY orders that had been issued in October 1989. At Ramstein he performed his assigned duties and received high performance ratings. In April 1990 Captain Heath was relieved of command at Donaueschingen. His duties at Ramstein continued unchanged.

Following his refusal to accept a non-judicial punishment proceeding, court-martial charges were preferred against Captain Heath in June 1990 and were referred to a general court-martial in August 1990. Trial proceedings began in October 1990 and were completed in February 1991. Captain Heath was found guilty of one of the charges, and the findings were approved July 11, 1991. He continued to perform his assigned duties at Ramstein throughout the period of the court-martial except for days when his attendance was required for the court-martial. Captain Heath states that he returned to Donaueschingen on July 29, 1991. He departed Germany under permanent change of station orders to Sheppard Air Force Base, Texas, in August 1991.

The blanket TDY orders under which Captain Heath travelled to Ramstein in February 1990 expired September 30, 1990. Air Force messages regarding his situation indicate that Air Force personnel in authority were aware that he continued on TDY at Ramstein after that date. While confirmatory orders to extend his TDY should have been issued by October 1, 1990, no such orders were issued until March 21, 1991. On that date retroactive orders were issued initially to cover the period from October 1990 through March 28, 1991, but later extended until the conclusion of the court-martial. Those orders stated that the purpose of Captain Heath's TDY was to attend his court-martial. The revised order did not specify that Captain Heath was not entitled to per diem.

Captain Heath's family was living in Ramstein at the time he was ordered there for TDY. He lived with his family while on TDY and therefore claimed per diem only for meals and incidental expenses, with the exception of periods of duty away from Ramstein. He received payments of per diem and travel allowances periodically while on TDY, including one payment of \$7,950 in May 1991. The Air Force computed the total he received as \$10,723.42.

The Air Force administrative report on this matter, dated February 23, 1993, recommends denial of Captain Heath's request to be relieved of the debt, citing JFTR Vol 1 U7450, which states, "when a member is ordered to perform travel for the purpose of disciplinary action...payment of...per diem allowances is not authorized." The report references the travel order "dated March 22, 1991, with an effective date of October 1, 1990, to attend court-martial proceedings." It acknowledges that neither this travel order nor others for Captain Heath listed in the report stated that per diem should not be paid, and notes that the Air Force proceeded to make per diem payments to Captain Heath as claimed.

It is a long-standing rule that travel orders cannot be amended retroactively to increase or decrease a member's entitlement to travel and transportation allowances because his entitlements under the orders vest at the time of travel. See Warrant Officer John W. Snapp, USMC, 63 Comp. Gen. 4 (1983).

If a member's travel is "disciplinary," the JFTR cited by the report applies. Paragraph U7450 of Volume 1 of the Joint Federal Travel Regulations (JFTR) indicates that a member on "disciplinary travel" is entitled only to limited reimbursement for travel. Per diem is not payable. If the member travels by privately owned conveyance, he is entitled to reimbursement only for oil and gas. If meals are not provided to him, he is entitled to reimbursement for them, but only up to a limited amount. Our decisions B-170827, Oct. 12, 1970, and B-176654, Apr. 11, 1973, dealt with members who were called to attend their courts-martial. We treated their travel as disciplinary travel and therefore allowed reimbursement only as set out in the 1 JFTR para. U7450.

However, the record in this case presents a distinct set of facts. Here, the member was granted TDY status for the purpose of performing an ongoing set of military duties. The record indicates he continued to perform those duties during the period his conduct was being investigated and through the subsequent stages of the proceedings against him. The record does not suggest he was relieved of these duties except for temporary periods to attend a court-martial and to return to his permanent duty station. These facts are not altered by the Air Force's attempt to re-characterize them retroactively.

The February 1990 letter Captain Heath received assigning him to Ramstein for TDY did not make reference to travel orders. Captain Heath states that he was instructed to travel under his pre-existing blanket TDY orders. This is in accord with the record before us, because other travel orders were not issued at that time and because subsequent Air Force messages refer to the need to issue confirmatory orders when his blanket TDY orders expired on September 30, 1990. Captain Heath performed military duties and conducted public business for the duration of his stay in Ramstein except for the days of his court-martial.

Captain Heath's situation is different from that of the member in our decision B-170827, supra. In that decision we denied payment of per diem because the member travelled to attend his court-martial and not to perform public business. In contrast, Captain Heath was in travel status to perform public business and is therefore entitled to per diem except while actually attending his court-martial.

Captain Heath's entitlement to per diem initially vested when he travelled to Ramstein. The TDY orders under which he travelled were general in nature and authorized per diem. This status was not changed by the confirmatory travel orders issued on March 21, 1991. These orders did not specify that Captain Heath was not entitled to per diem, and while the orders referred to court-martial proceedings, we must presume that there was also intent to continue his original status—that is, performing public business at Ramstein. The record indicates that he indeed continued to perform military duties at Ramstein until July 1991.

Furthermore his relief from command in April 1990 did not change his entitlement since he continued to perform military duties at Ramstein and his permanent station was not changed.

Accordingly Captain Heath is entitled to per diem for meals and incidental expenses for the time he spent in Ramstein performing military duties. He is not entitled to per diem for the days he spent at his court-martial or for brief periods when he returned to his permanent duty station. His entitlement should be calculated on this basis.



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