

DECISION**DIGEST - L - ml**
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-192040

DATE: August 7, 1978

MATTER OF: Specialist Fifth Class [REDACTED], USA

DIGEST: When a regulation is issued based on obvious administrative error, it may be adjusted retroactively to correct the mistake. Therefore, when a station housing allowance was inadvertently deleted from an active duty station, based on information that no personnel were assigned there when in fact that was not the case, the regulation may be retroactively corrected to reinstate the allowance.

The question presented by this case is whether a station housing allowance authorized for military personnel assigned to Tilburg, Netherlands, which was cancelled due to misinformation may be retroactively reinstated.

The question was presented by Lieutenant Colonel L. W. Sullenger, USA, Finance Officer, Headquarters, 3D Armored Division, APO New York 09169, concerning the payment of a housing allowance to Specialist Fifth Class [REDACTED]. The request has been assigned Control No. 78-24 by the Per Diem, Travel and Transportation Allowance Committee.

The pertinent facts are undisputed. Specialist [REDACTED] arrived at his duty station, the Veterinary Station, Tilburg, Netherlands, on July 26, 1977. He was authorized a station housing allowance at Index 225 pursuant to Volume 1, Joint Travel Regulations (1 JTR), paragraph M4301 and Appendixes A and B. This allowance was based on housing reports submitted by his predecessor who had departed during February 1977. No one had been stationed at Tilburg from February 1977 until July 26 when Specialist Fagerland arrived.

During this 5-month period the Defense Attache Office (USDAO), at The Hague, Netherlands, prepared a supplemental housing report advising the Per Diem, Travel and Transportation Allowance Committee in Washington, D.C., that no military personnel were assigned in Tilburg at that time. This report was submitted on July 27, 1977, 1 day after Specialist [REDACTED]

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arrived in Tilburg. Based on the information in this report, the Per Diem Committee deleted the station housing allowance for Tilburg, effective September 1, 1977. During October the USDAO, The Hague, requested that Tilburg's station housing allowance be reinstated, and effective November 1, 1977, it was reinstated at Index 140 based on the data then submitted to the Committee. Thus, from the time of his arrival at Tilburg through August 1977 the member was entitled to the allowance at Index 225, from September through October he was entitled to no allowance, and thereafter he was entitled to the allowance at Index 140.

All evidence indicates that there was no intention to inactivate the Veterinary Station, which in essence deprived Specialist [REDACTED] of his established station housing entitlement for September and October. Apparently, the USDAO was not aware of the Per Diem, Travel and Transportation Allowance Committee policy to delete the housing allowance for stations reported as having no personnel assigned. The Committee reports that had the USDAO indicated in its report that there was no intention that Tilburg be deleted, the allowance would not have been terminated.

Station housing allowances are prescribed by the Secretary concerned under 37 U.S.C. 405 (1970), and are designed to defray the cost of living experienced by certain members of the uniformed services stationed in high cost areas overseas. It is clear that Specialist [REDACTED] was assigned to Tilburg, and was bearing the expenses of that assignment for which an allowance would normally be authorized.

This Office has consistently adhered to the rule that when regulations are properly issued rights thereunder become fixed and although such regulations may be amended prospectively to increase or decrease rights granted thereby, they may not be amended retroactively except to correct obvious errors. 56 Comp. Gen. 1015 (1977) and cases cited therein. However, when a determination is made based on erroneous information or observation, and therefore does not represent a consideration of actual circumstances, a retroactive adjustment or application has been allowed. See B-154781, August 12, 1964, and B-157955, December 10, 1965. In this case the determination to delete the housing allowance for Tilburg was made based on

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erroneous information or an erroneous interpretation thereof and, therefore, did not represent consideration of the actual circumstances. Accordingly, we would not object to a retroactive reinstatement of the erroneously deleted housing allowance for Tilburg to permit payment of this allowance to the member for September and October 1977.

Appropriate action should be taken to implement this decision and to pay Specialist [REDACTED] the appropriate housing allowance for the period in question.


Deputy Comptroller General
of the United States

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Military personnel

Housing

Retroactive adjustments

REGULATIONS

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