

DECISION



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

FILE: B-190761

DATE: March 31, 1978

MATTER OF: Staff Sergeant [redacted], USAF

- DIGEST:
1. Where the United States Court of Military Appeals (USCMA) orders a court-martial finding and sentence set aside and the charges dismissed, the member is entitled to the pay and allowances including travel and transportation allowances of the grade from which that sentence purported to reduce him.
 2. Where a court-martial order restores a member to all rights, privileges and property of which the member has been deprived by virtue of the findings of guilty and sentence subsequently set aside by the USCMA, the member is restored to the position he was in prior to the charges being filed against him as if such charges had never been filed. In this case such action may be viewed as invalidating PCS orders issued for the purpose of confinement and retraining and the member's rights determined as if he had been transferred on PCS from his original duty station to the next station to which he was assigned for regular duty.

This action is in response to a letter dated October 21, 1977 (file reference ACF), with enclosures, from the Accounting and Finance Officer at Beale Air Force Base (AFB), California, requesting an advance decision as to the entitlement of Staff Sergeant [redacted], USAF, [redacted], to travel and transportation allowances in the circumstances presented. The request was assigned PDTATAC Control No. [redacted] and forwarded to this Office by the Per Diem, Travel and Transportation Allowance Committee on November 22, 1977.

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Following a general court-martial trial and conviction, the member on July 10, 1975, was sentenced at Grand Forks, AFB, North Dakota, to be confined at hard labor for 8 months, to forfeit pay of \$100 per month for 5 months, to be reduced from grade E-5 to E-3, and to be discharged from the service with a Bad Conduct Discharge (BCD). He was placed in confinement at Grand Forks AFB pending review of his sentence by the Convening Authority, Headquarters, 15th Air Force (HQ, 15AF).

On September 2, 1975, the member received written communication from his commander that since he was no longer permanently residing with his dependents, he was no longer authorized to occupy Government family housing and his Government family quarters was terminated on September 22, 1975, pursuant to that directive. The member was required to place his household goods in storage in Grand Forks, North Dakota, at his own expense as a result of this directive.

The convening authority, HQ 15AF, confirmed the sentence by General Court-Martial Order No. , , and designated the 3320th Retraining Group, Lowry AFB, Colorado, as the place of confinement pending appellate review. The Air Force Court of Military Review subsequently approved the findings and sentence without modification. Pursuant to the action by the Convening Authority, the member was ordered on a permanent change of station (PCS) move from Grand Forks AFB to Lowry AFB. On October 22, 1975, the same activity issued orders to amend the original PCS orders of October 20, 1975, to delete authority for movement of dependents, shipping and storage of household goods, and payment of dislocation allowances.

By General Court-Martial Order No. , dated , Headquarters, Lowry Technical Training Center, Lowry AFB, suspended so much of the member's sentence as pertained to the BCD and remaining confinement and forfeiture of pay until July 29, 1976, at which time, the suspended actions would be remitted without further action unless the suspension was sooner vacated. Thereafter, on February 10, 1976, pursuant to PCS orders of February 5, 1976, the member departed Lowry AFB on PCS reassigning the member to Beale AFB, California. Due to the reduction in grade from E-5 to E-3, the member was not entitled to movement of his dependents or household goods at Government expense.

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The member returned to Grand Forks, North Dakota, to pick up his private automobile (POV) which he had stored prior to his transfer to Lowry AFB. From Grand Forks, North Dakota, he proceeded to Beale AFB arriving on February 20, 1976. Upon arrival at Beale AFB he was paid \$92.12 for official distance mileage of the ordered travel, Lowry AFB to Beale AFB. As a result of this move, the member shipped his household goods from storage in Grand Forks, North Dakota, to Beale AFB, California, and also moved his dependents from Amsterdam, Netherlands, where they apparently had been residing during his confinement and retraining. Movement of household goods and transportation of dependents was all done at the member's own expense.

On December 16, 1976, the United States Court of Military Appeals (USCMA) reversed the decision and set aside the findings and sentence and ordered the charges against the member dismissed. United States v. _____, Pursuant to the action of the USCMA, by General Court-Martial Order No. _____, dated _____, the findings of guilty and the sentence promulgated by General Court-Martial Order No. _____ were set aside. The charges were dismissed and all rights, privileges, and property of which the member had been deprived as a result of the guilty finding and resulting sentence were ordered to be restored.

Based upon General Court-Martial Order No. _____, the member has submitted a claim to the Air Force for travel and transportation expenses. Doubt as to the validity of the member's claim has been raised in the absence of guidance in the Joint Travel Regulations (JTR) relating to such cases when viewed against the broad language contained in General Court-Martial Order No. _____ which restores all "rights, privileges, and property" to the member.

In view of these circumstances, our decision on the following questions is requested:

- a. Are the dismissal of charges, sentence set aside, and restoration provisions as outlined in General Court-Martial Order No. _____ of _____, to be considered as overriding the constraints imposed by the travel orders under which the member actually traveled on the PCS moves?

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b. If the answer to question a is affirmative, should the member's move be considered a PCS from Grand Forks AFB, North Dakota, to Beale AFB, California, with temporary duty en route at Lowry AFB, Colorado?

c. If the answer to question b is affirmative, is the member then entitled to temporary duty entitlements while at Lowry AFB, Colorado, on the same basis as if his duty at Lowry AFB had not been for retraining?

d. If the answer to question b is negative, should the member's travel be paid as a PCS from Grand Forks AFB, North Dakota, to Lowry AFB, Colorado, with no dependent travel at Government expense, and a second PCS from Lowry AFB, Colorado, to Beale AFB, California, with transportation of dependents and household goods from Grand Forks AFB, North Dakota, to Beale AFB, California, since dependents and household goods were not moved as a result of the PCS to Lowry AFB, Colorado, under the authority of paragraph M7055, 1 JTR?

e. If the answer to question d is affirmative may the storage charges for household goods at Grand Forks, North Dakota, be paid in total since the basic period of entitlement for 90 days was exceeded for reason beyond the control of the member, and may the member be paid a dislocation allowance at the E-5 rate? May the member also be paid his transportation from Lowry AFB, Colorado, to Grand Forks, North Dakota, on a merit basis?

f. If the answer to question e is negative, may the member be paid his claimed expenses including his mileage from Lowry AFB to Grand Forks AFB, North Dakota, thence to Beale AFB, California, and the private auto storage fees on a merit basis?

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g. If the answer to question f is affirmative, may the member also be paid a dislocation allowance on a merit basis?

Since the sentence approved on _____, was set aside by the USCMA, the action by HQ 15AF in General Court-Martial Order No. _____, in restoring "all rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty and the sentence so set aside", had the effect of restoring the member to the position he was in prior to the charges being filed against him as if such charges had never been filed. See 10 U.S.C. 875 (1970).

Accordingly, in answer to your question a the dismissal of charges, set aside of sentence, and restoration of member's rights, privileges and property override the constraints imposed by travel orders issued as a result of his court-martial conviction. He should be treated as being entitled to all of the benefits otherwise available to a member in grade E-5 for travel, transportation and dislocation allowances.

Regarding questions b and c, while the transfer to Lowry AFB from Grand Forks AFB was ordered as a PCS, except for the court-martial conviction, the member would not have been so transferred since that PCS was for the sole purpose of carrying out the sentence of the court-martial. In the circumstances of this case, it appears reasonable to view the PCS to Lowry as invalid and ineffective. However, since the member was physically present at Lowry, he may be considered as on temporary duty away from his permanent duty station--Grand Forks AFB--during that period. Also, in the circumstances the member may be reimbursed for transportation from the temporary duty station back to his permanent duty station as if he had returned on official business prior to his transfer to Beale AFB. Appropriate payments for per diem incident to this duty as if it had been temporary duty may be allowed since, in the circumstances, the restriction against payment of per diem for members on retraining (paragraph M4201-16, 1 JTR) would not be for application. Deductions from per diem for meals and lodgings furnished should be made.

As indicated the transfer to Beale AFB should be considered as a PCS from Grand Forks AFB. Although this transfer may not have occurred had the member not been convicted by court-martial,

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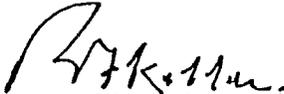
he is now assigned to Beale AFB and that assignment was not made pursuant to the court-martial sentence. The member having never been validly reduced from grade E-5, is entitled to move his dependents and household goods from the old permanent duty station upon the PCS from Grand Forks AFB to Beale AFB.

Regarding storage and transportation, as indicated the member's entitlement may be based upon shipment from Grand Forks AFB to Beale AFB under entitlements applicable to a member in grade E-5 upon PCS. It would appear that temporary storage for the total period involved may properly be paid under an authorization for an extension of temporary storage provided for in paragraph M8100-2b, 1 JTR. Dislocation allowance should be paid on the basis of the member's grade, E-5.

In view of the above, answers to questions e through g are not required.

Accordingly, the vouchers submitted are being returned, payment being authorized as indicated above.

Deputy


Comptroller General
of the United States