

**DECISION**



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PLM-1  
McConnell

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

**FILE:** B-159399

**DATE:** October 14, 1981

**MATTER OF:** Douglas K. Ramsey - - Entitlement to Allowances Under Missing Persons Act

- DIGEST:**
1. Foreign Service Officer, who was held captive for 7 years in Vietnam, seeks payment for station per diem and travel per diem under Missing Persons Act, 5 U.S.C. §§ 5561 et seq. The military term "station per diem" under the Missing Persons Act may be equated with a civilian post allowance. Therefore, if he was receiving a post allowance at the time of capture, that allowance may be continued for 90 days. However, travel per diem may not be allowed under Missing Persons Act.
  2. Foreign Service Officer seeks a living quarters allowance under the Missing Persons Act, 5 U.S.C. §§ 5561 et seq., for 7-year period he was held captive in Vietnam. Since civilian employees in Vietnam were provided either Government quarters or a living quarters allowance, we conclude that a living quarters allowance may be paid for 7-year period he was held in captivity.
  3. Foreign Service Officer who is entitled to the continuance of certain pay and allowances under the Missing Persons Act, 5 U.S.C. §§ 5561 et seq., may not receive currency and inflation adjustments or interest on amounts due him in the absence of specific statutory authority.

The issue in this decision is the entitlement of a Foreign Service Officer to certain allowances during the 7-year period he was held captive in Vietnam. We hold that under the Missing Persons Act he is entitled to continuation for 90 days of any post allowance he was receiving at the time of his capture and to a living quarters allowance

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during the 7-year period. However, he is not entitled to travel per diem for temporary duty, to currency and inflation adjustments, or to interest on the payments he receives under the Missing Persons Act.

#### BACKGROUND

Mr. Douglas K. Ramsey, a civilian employee with the Department of State, appeals the denial by our Claims Division of his claim for certain benefits under the Missing Persons Act, 5 U.S.C. §§ 5561 et seq. (Supp. II, 1965-1966).

Mr. Ramsey, a Foreign Service Officer, was officially stationed in Saigon as Third Secretary to the American Vice Consul when he was detailed effective February 28, 1965, to the Agency for International Development (AID) to serve as an Area Development Officer for AID's Counter-insurgency Office. Mr. Ramsey was on temporary duty in Hau Nghia when he was captured by the Viet Cong on January 17, 1966. He was not released until February 12, 1973. Mr. Ramsey filed a claim with AID on July 30, 1975, asserting entitlement to overtime compensation, subsistence or station per diem allowances, and any other special or incentive pay to which he might have been eligible during the period of his captivity.

His claim for overtime compensation was allowed by the Department of State, but his claim for station per diem allowance, quarters allowance, and other benefits was forwarded to our Office by the Department for our determination since the Department raised legal questions regarding its authority to grant those allowances.

On December 26, 1979, our Claims Division allowed Mr. Ramsey's claim for station per diem up to 90 days but denied his claim for station per diem beyond 90 days and other benefits.

On appeal, Mr. Ramsey argues that, since the per diem he was receiving while on temporary duty was actually incentive or special pay, he should be entitled to continuation of that per diem during the period of

his captivity. Mr. Ramsey also seeks reimbursement for basic quarters allowance or housing allowance. Finally, Mr. Ramsey appeals the denial of his claim for interest or reimbursement for lost purchasing power due to inflation and currency fluctuations.

#### DISCUSSION

Congress enacted the Missing Persons Act in 1942 to provide authorization for the continued payment of the pay and allowances of members of the uniformed services, and civilian employees assigned to duty outside the United States, who were determined to be missing, interned, or captured. Act of Mar. 7, 1942, ch. 166, 56 Stat. 143, 50 U.S.C. App. § 1002. The Missing Persons Act was amended by the Act of August 29, 1957, Pub. L. No. 85-217, 71 Stat. 491, and that amendment enumerated the pay and allowances which Congress intended to continue. Specifically, the amendment provided that a military or civilian employee would be entitled to receive or to have credited to his account "\* \* \*the same basic pay, special pay, incentive pay, basic allowance for quarters, basic allowance for subsistence, and station per diem allowances for not to exceed ninety days, to which he was entitled at the beginning of such period of absence or may become entitled thereafter\* \* \*." 50 U.S.C. App. § 1002 (Supp. V, 1953-1958). A reason given for adding the more restrictive language was to make clear that travel per diem was not among the pay and allowances intended to be continued. See H.R. Rep. No. 204, 85th Cong., 1st Sess. on H.R. 5807, p. 4, quoted in 44 Comp. Gen. 657 (1965).

In 1966, Congress codified a military version of the Missing Persons Act in 37 U.S.C. §§ 551-558, and a civilian version in 5 U.S.C. §§ 5561-5568. Act of Sept. 6, 1966, Pub. L. 89-554, 80 Stat. 378.

We will now consider each of Mr. Ramsey's claims.

#### I

Mr. Ramsey seeks reimbursement for station per diem while he was held captive in Vietnam. Station per diem is an allowance that is provided to a member

of a military service to compensate for the added expense of having to live in an unusually expensive area while stationed overseas. See 44 Comp. Gen. 657 (1965). The 90-day limit on the continuance of a station per diem allowance under the Missing Persons Act reflects the purpose of that allowance. As we stated in 44 Comp. Gen. 657, at 659, reflecting the legislative history of the Missing Persons Act, dependents of a member in missing status generally are not evacuated to the United States until the member has been missing for 30 days, and as soon as those dependents are evacuated to the United States the station per diem allowances are terminated.

We have in the past construed broadly the pay and allowances specified in 5 U.S.C. §§ 5561-5568. See 45 Comp. Gen. 633 (1966). In the present case, we do not believe we are constrained by the use of military terminology in construing the civilian version of the Missing Persons Act in title 5, United States Code. Thus, we recognize that the civilian post allowance authorized by 5 U.S.C. § 3037(1) (1964) (now 5 U.S.C. § 5924(1)) serves the same purpose as the military station per diem allowance and may be considered as a civilian equivalent of that allowance.

Our Claims Division has allowed Mr. Ramsey's claim for "station per diem" up to 90 days following his capture, and on appeal Mr. Ramsey accepts the 90-day limitation. However, the record before us does not show whether Mr. Ramsey was receiving a post allowance while stationed in Vietnam. If the State Department determines that Mr. Ramsey was receiving a post allowance at the time of his capture, this allowance may be continued for a period of 90 days.

## II

Mr. Ramsey seeks to characterize the per diem he received while on temporary duty before his capture as special or incentive pay. While the Department of State has expressed a desire to grant Mr. Ramsey 90

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days of station per diem or post allowance, department officials state that the allowance Mr. Ramsey received while in Hau Nghia was travel per diem.

In a memorandum of February 23, 1965, the United States Operations Mission to Vietnam directed that Saigon be designated the permanent duty station of all nonmilitary personnel, as of March 1, 1965, "\* \* \* in order to make service in Vietnam more attractive and/or acceptable." We presume that making civilian personnel eligible for travel per diem was a major reason for designating Saigon as the duty station for personnel performing duties outside of that location.

However, we are unable to find any evidence in the record that the per diem Mr. Ramsey received was special or incentive pay. While the United States Operations Mission apparently used the entitlement to travel per diem as an incentive for employees to remain in Vietnam, we know of no statutory authority that authorizes special or incentive pay under these circumstances. Furthermore, as shown in our decisions, the legislative history of the Missing Persons Act clearly indicates that travel per diem does not continue once an individual enters a missing status. See Gregory F. Pariseau and Rickey A. Tevebaugh, B-186141, July 27, 1976, and decisions cited therein. See also Hevenor v. United States, 121 Ct. Cl. 77 (1951). Therefore, we must deny Mr. Ramsey's claim for travel per diem during the period he was held captive.

### III

We now turn to Mr. Ramsey's claim for a quarters allowance. Since the Missing Persons Act itself does not establish entitlement to any civilian pay or allowance, Mr. Ramsey must have been entitled to a quarters allowance before his capture in order that the allowance might be continued under the Missing Persons Act. See B-167592, August 12, 1969.

Section 3036 of title 5, United States Code (1964) (now 5 U.S.C. § 5923(2)), provided in pertinent part the following:

"Whenever Government-owned or Government rented quarters are not provided without charge for an employee in a foreign area, one or more of the following quarters allowances may be granted to such employee where applicable\* \* \*

(2) A living quarters allowance for rent, heat, light, full gas, electricity, and water\* \* \*." (Emphasis added.)

There is no indication in the record before us whether or not Mr. Ramsey was receiving a living quarters allowance (LQA) prior to his capture. However, in a memorandum dated February 24, 1978, State Department officials concede that while few employees were granted LQA, most were provided housing by the Government. State Department officials estimate that the cost to the Government for housing during the 7-year period would have been \$586.43 per year.

In a prior decision involving members of the uniformed service, we held that members who were assigned to quarters provided by the Government prior to their entering "missing status" were entitled to a basic allowance for quarters under the Missing Persons Act in view of the statutory provisions which entitle members on active duty to quarters and subsistence or an appropriate allowance at all times. 52 Comp. Gen. 23 (1972). In the present case, it appears that State Department employees were either furnished Government quarters or provided with LQA while stationed in Vietnam. We conclude that Mr. Ramsey is entitled to LQA during his period of captivity. His claim should be paid based upon the applicable LQA rate in effect at that time rather than the cost to the Government for housing as estimated by the State Department.

#### IV

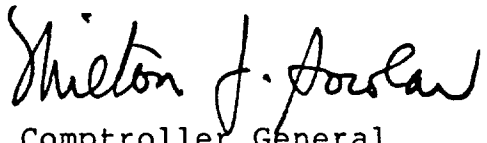
Finally, with respect to Mr. Ramsey's claim for interest, we conclude that there is no authority to allow Mr. Ramsey's claim in the absence of a specific

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statutory provision granting interest. See Fitzgerald v. Staats, 578 F.2d 435 (D.C. Cir. 1978) and 53 Comp. Gen. 824 (1974). On the same basis we find no authority to adjust amounts payable to Mr. Ramsey for inflation or currency fluctuations. See B-185960, August 19, 1976; and B-181687, September 23, 1975.

CONCLUSION

Therefore, we conclude that Mr. Ramsey is entitled to continuation for a period of 90 days of any civilian post allowance he was receiving at the time of his capture and to a living quarters allowance for the period of his captivity. However, we affirm the denial of Mr. Ramsey's claims for travel per diem during his captivity, for interest, and for currency or inflation adjustments to payments he receives under the Missing Persons Act.

*for*   
Comptroller General  
of the United States