

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



B-176614

JAN 9 1973

Mr. [REDACTED]  
[REDACTED] Skynob Drive  
Ann Arbor, Michigan 48105

Dear Mr. [REDACTED]:

This is in reference to your request, dated June 19, 1972, for a review of our Transportation and Claims Division settlement of March 16, 1972, which disallowed your claim for reimbursement of the cost of transportation for your wife from McGuire Air Force Base, New Jersey to Rhein Main Air Base, Germany, in September 1970. Also, we have received your letter of October 31, 1972.

By Letter Orders No. A-05-790, dated May 18, 1970, you were ordered to active duty from Ann Arbor, Michigan, for a period of two years, effective July 20, 1970. You were assigned to USARV Transient Detachment (P5-WOBRAA), APO San Francisco 96384, for further assignment, with temporary duty of approximately five weeks en route at Brooke Army Medical Center, Fort Sam Houston, Texas. However, on August 24, 1970, your name was placed on a list of those who were to move with 3d Battalion, 61st Artillery, located at Fort Bliss, to USAREUR. A permanent change of station from Fort Bliss to USAREUR had been directed for the 3d Battalion by Letter Orders No. 6-10, dated June 8, 1970.

By Letter Orders No. 316, dated August 25, 1970, your orders of May 18 were amended to assign you to the 3d Battalion, 61st Artillery, and a first indorsement on this amending order, dated October 28, 1970, provided that concurrent travel of your dependents was not authorized overseas, but that family separation allowance, shipment of household goods, and movement of your dependents to a designated place were authorized.

In the settlement of March 16, 1972, it was said that in order to establish entitlement to the transportation of your dependent wife at Government expense, USAREUR had to be considered your first permanent duty station and since her transportation to the overseas station was not authorized, you were entitled to her transportation at Government expense from Ann Arbor, Michigan, the place where she was located when you received the order assigning you to USAREUR, to Kennedy Airport, New York, her actual point of departure for Germany.

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Since the entitlement for the cost of traveling this distance was \$67.32 less than the amount you had already received, this difference was reported as an overpayment to the Finance Center, United States Army, Indianapolis, Indiana. The Center was advised to take appropriate steps to recover such overpayment from you and was also advised that any payment that may have been made to you for the travel of your dependent wife from Ann Arbor to San Antonio appeared to have been erroneous and should likewise be collected.

Consequently, by a Pay Adjustment Authorization, dated June 12, 1972, two adjustments regarding your military pay were made, the first for \$67.32 on account of erroneous overpayment of dependent mileage and the second for \$104.04 representing erroneous payment of a dislocation allowance for your first permanent change of station.

Your claim for the cost the Government would have incurred to furnish transportation for your wife from McGuire Air Force Base, New Jersey, to Rhein Main Air Force Base, Germany, was disallowed by the settlement for the reason that your orders specifically provided that concurrent travel of dependents to your overseas station was not authorized. It was further stated that in such circumstances your wife's travel was limited to certain places including the point of actual departure of dependents from the United States in conjunction with travel to a place outside the United States designated by the member. That is the basis on which reimbursement for your wife's travel was authorized from Ann Arbor to New York.

Your wife's further travel to your overseas station was not authorized at Government expense in the absence of approval by the overseas commander. It appears from your claim statement of June 2, 1971, that such approval was not given, that a port call for your wife's travel was not issued and that you decided to bring your wife to Germany at your own expense. In such circumstances, the disallowance of your claim was proper.

In your letter of June 19, 1972, you state that the settlement of March 16 assumed that USAREUR was your first duty station. You contend that according to Letter Order Number 316, dated 25 August 1970, Fort Bliss, El Paso, Texas, was your first duty station. You say that you reported to El Paso, Texas on August 27, 1970, and worked in your MOS with your unit, 3d Battalion, 61st Artillery, until the unit move which brought you to USAREUR on September 2, 1970. You maintain therefore, that USAREUR was your second PCS and that you are entitled to a dislocation allowance and contend that the action taken by your local

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finance officer to collect the overpayment of the dislocation allowance is erroneous and that you should be refunded that amount.

The basic statutory provision authorizing the dislocation allowance appears at 37 U.S.C. 407 which provides in its pertinent part as follows:

"(a) Except as provided by subsections (b) and (c) of this section, under regulations prescribed by the Secretary concerned, a member of a uniformed service--

"(1) whose dependents make an authorized move in connection with his change of permanent station; \*\*\* is entitled to a dislocation allowance

\* \* \* \* \*

"(c) A member is not entitled to payment of a dislocation allowance when ordered from his home to his first duty station or from his last duty station to his home."

This provision has been implemented by Chapter 9, Joint Travel Regulations. Paragraph M9003-1, JTR, provides that the dislocation allowance is payable to a member with dependents whenever dependents relocate their household in connection with a permanent change of station. However, paragraph 9004-1, JTR, provides that the dislocation allowance "will not be payable in connection with permanent change-of-station travel performed:

1. from home or from place from which ordered to active duty to first permanent duty station upon \* \* \* call to active duty \* \* \*."

See decision B-169507, May 27, 1970, copy enclosed.

The term "permanent station" is defined in paragraph M1150-10a, JTR, to mean "the post of duty or official station \* \* \* to which a member is assigned or attached for duty other than 'temporary duty' \* \* \*." The term "temporary duty" is defined in paragraph M3003-2a, JTR, to mean "duty at one or more locations, other than the permanent station, at which a member performs temporary duty under orders which provide for further assignment, or pending further assignment, to a new permanent station \* \* \*."

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In determining your first permanent duty station, the following language from 36 Comp. Gen. 757, 758 (1957) will also prove helpful:

"Whether an assignment to a particular duty station is temporary or permanent is a question of fact and is for determination from a consideration of the orders under which the assignment is made and of the character of the assignment itself, particularly with reference to such items as its duration and the nature of the duty. By definition, the word 'temporary' is a term of limitation which indicates a period of short duration and transitory nature."

Letter Orders No. 6-10, dated June 8, 1970, directed a permanent change of station for the 3d Battalion, 61st Artillery. However, at this time you were performing temporary duty under Letter Orders No. A-05-790, dated May 18, 1970, which assigned you to the USARV Transient Detachment, APO San Francisco 96384 for further assignment, after your completion of temporary duty at Fort Sam Houston, Texas. You were not affected by the orders directing the unit move until August 25, 1970, when Letter Orders No. 316 assigned you to the 3d Battalion, 61st Artillery, Fort Bliss, Texas.

Those orders specifically provided that paragraph 10-3m of Army Regulation 614-30 would apply. That paragraph, in effect at the time here involved, provided that orders assigning personnel to units that are scheduled for deployment to long tour overseas areas within 90 days of the member's reporting date at the new station would contain a restrictive statement that the member is assigned to the new unit or station "for further movement to an area overseas." Thus, by reference that provision became a part of your orders of August 25, 1970, and was in effect when you reported at Fort Bliss. Consequently, your transfer to Fort Bliss was not for permanent duty but was for further transfer overseas. Subsequently, the orders of August 25, 1970, were amended by a first indorsement, dated October 28, 1970, assigning you to 3d Battalion, 61st Artillery for further movement to USAREUR as intended by the basic orders.

It is evident, therefore, that Fort Bliss, Texas was not your first permanent duty station, since you were assigned to 3d Battalion, 61st Artillery there for the purpose of further movement to USAREUR. The duty you performed at Fort Bliss was of short duration and was performed under orders which provided for further assignment. This clearly comes within the definition of "temporary duty."

Los Angeles, California  
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Your first permanent duty station upon your call to active duty was USAREUR. This being the case, you are not entitled to a dislocation allowance because of the prohibitory language in 37 U.S.C. §407(c) and in paragraph M9004-1-1, JTR. Consequently, the settlement of our Transportation and Claims Division is sustained.

Sincerely yours,

B. F. KELLER

Deputy Comptroller General  
of the United States

Enclosure