



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-176980

January 3, 1973

Newton, Illinois 62448

Dear Mr.

We again refer to your letter of August 14, 1972, requesting review of Office settlement dated August 8, 1972, which disallowed your claim for per diem for the period June 1, 1970, to June 23, 1971, while on active duty for training as a chief warrant officer 3, United States Army Reserve, at Overland (St. Louis), Missouri.

By letter Orders No. T-05-951677, dated May 4, 1970, Office of the Adjutant General, U. S. Army Administration Center, St. Louis, Missouri, you were ordered with your consent to active duty for training for a period of 120 days and directed to report not later than June 1, 1970, to that Center. Those orders showed your address as Ferguson, Missouri. On September 23, 1970, that Center issued similar orders directing additional active duty for training for 89 days with the first day of training as September 29, 1970. The latter orders were amended on December 30, 1970, changing the period of duty from 89 to 119 days. On January 28, 1971, the September 23, 1970, orders were again amended to further extend the period under the latter orders to 179 days, and on April 20, 1971, an additional amendment extended that period to 268 days.

Copies of paid vouchers on file show that you were paid a mileage allowance of \$0.36 for the official distance between Ferguson and Overland, Missouri, for travel performed from Newton, Illinois, to Overland, May 31 to June 1, 1970, but no per diem during the entire period you were on active duty for training at the U. S. Army Administration Center. In this connection, the monthly pay vouchers covering the period September 1, 1970, to June 23, 1971, bear the statement "On continuous ADT under more than one set of orders."

In a letter dated July 30, 1970 [1971], you say that when you went on active duty for training your home of record was Newton, Illinois, and that since one of the requirements for such duty was that you must live in the St. Louis area, you were told that you could use your temporary address in that area (Ferguson). You also advised that you rented an apartment and used the temporary

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address. When you ascertained that Reserve personnel on duty at stations similar to the one you were attached were receiving per diem you presented claim therefor.

The Finance Center, U. S. Army, Indianapolis, Indiana, transmitted your claim to our Claims Division (now Transportation and Claims Division) and by settlement dated August 8, 1972, it was disallowed for the reason that you had commuted daily between your duty station and residence in the area and, therefore, payment of per diem is precluded by paragraph M6001-1a, item 2, of the Joint Travel Regulations which provides that per diem is not payable to a member of a Reserve component when he commutes daily between his home or place from which he was called (or ordered) to active duty and his permanent duty station.

In your letter of August 14, 1972, you say that Ferguson was only a mailing address and that the U. S. Army Administration Center, in order to avoid payment of per diem, would not "cut orders" for an individual not having a St. Louis mailing address. You also say that personnel on active duty assigned to the Center were paid per diem and that one Reservist received per diem for over a year and a half. In contending that you are entitled to per diem you point out that you were paid family separation allowance because the authorities knew that your home was in Newton.

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Section 3 of the act of December 1, 1967, Public Law 90-168, 81 Stat. 521, amended section 404(a) of title 37, United States Code, by adding clause (4) thereto to provide for payment, under regulations prescribed by the Secretaries concerned, of allowances to a member of a uniformed service "when away from home to perform duty, including duty by a member of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, in his status as a member of the National Guard." The purpose of section 3 of Public Law 90-168 is to permit the payment of per diem to Reservists ordered from their homes for short periods (less than 20 weeks) of active duty training at training duty stations other than at military installations where Government quarters and mess are available and we have held that the provisions of 37 U.S.C. 404(a)(4) simply provide authority for the payment of per diem on that basis even though such training duty stations in fact are the members' basic posts of duty (permanent duty stations). 48 Comp. Gen. 654 (1969).

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Implementing regulations are contained in the Joint Travel Regulations. Paragraph M6001-1a(2) (Change 209, dated June 1, 1970) provides, that no per diem allowances are payable in cases where a member of a Reserve component commutes daily between home "or place from which called (or ordered) to active duty" and the permanent duty station.

As indicated above, the record shows that you were ordered to active duty from Ferguson, a place located about 6 miles from your duty station. You stated that you rented an apartment there and it was believed you commuted daily between that place and your duty station. You now contend, however, that Ferguson was only a mailing address and that your home was Newton.

No per diem could have been paid to you because of the restriction in the above regulation notwithstanding that your home was in Newton. Therefore, whether you commuted from Ferguson or from some other place located near Ferguson and within the vicinity of your duty station would not serve to entitle you to the allowance contrary to the governing regulation.

Your contention that you are entitled to the per diem allowance because you received a family separation allowance during your period of active duty for training is without merit. In our decision of April 2, 1964, 43 Comp. Gen. 650 (copy enclosed, we said, in answer to question 4, on page 656, that it is our view that a Reservist of an eligible grade and with dependents who is ordered to active duty for training for less than 1 year or to active duty for other than training duty for less than 6 months, but for a period of more than 30 days, is entitled to a family separation allowance under 37 U.S.C. 427(b)(1) if his dependents do not reside at or near his station, since the movement of his dependents to his permanent duty station is not authorized at Government expense.

Since question 4 related to a Reservist ordered to active duty for training for a period of 45 days away from the Reserve unit to which he was attached for drill purposes and he had no active duty station other than the station to which he was ordered for training duty, we concluded that since the assignment was in excess of 30 days, the training duty station should be regarded as the member's permanent station for family separation allowance purposes and that he was entitled to the allowance under clause (1) rather than clause (3) of 37 U.S.C. 427(b) if he otherwise qualified.

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Under the authority of 43 Comp. Gen. 650^x you were paid the family separation allowance for the period you were on active duty for training. That decision, however, does not serve as authority for the payment of the per diem to you incident to that tour of duty. As indicated above, the governing law and regulations expressly preclude the payment of the per diem allowance to you since you were ordered to duty from a place within commuting distance of your duty station.

Concerning your statement that a Reservist at your station was paid per diem for over one and one-half years, if the facts and circumstances in his case are identical to those in your case, then the payments were improper and will be for consideration in the audit of the disbursing officers' accounts. Clearly, such erroneous payments do not afford a basis for a like payment to you.

Accordingly, the settlement of August 8, 1972, is sustained.

Very truly yours,

R.F. KELLER

Deputy Comptroller General
of the United States

Enclosure