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DECISION



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

50537

FILE: B-181344

DATE: FEB 12 1975

MATTER OF: Mr. Marvin W. Shoaf - Per Diem for Delays in Separation Travel

DIGEST: Employee of Department of Army who had suffered heart attack and was authorized surface transportation for separation travel from Korea to Indiana based on doctor's recommendation in accordance with JTR, and who incurred delays as result of administrative oversight by Army, including 9-day delay in San Francisco awaiting arrival of automobile being shipped from Korea, is entitled to per diem for periods of delay since delays, in circumstances presented, are not deemed "for traveler's personal convenience" so as to destroy entitlement.

By letter of March 26, 1974, Mr. Marvin W. Shoaf, La Porte, Indiana, appealed that part of our Transportation and Claims Division's November 6, 1973, settlement of his claim for per diem relating to separation travel performed from Pusan, Korea, to Peru, Indiana, as an employee of the Department of the Army.

The record indicates that on November 17, 1970, while employed as Harbor Tug Master at Pusan, Mr. Shoaf suffered a severe heart attack (acute myocardial infarction). He subsequently applied for, and was granted, disability retirement effective April 2, 1971. Travel Order Number LO-6-257, issued on June 23, 1971, authorized surface transportation for Mr. Shoaf's return to his place of residence in the United States, based on the recommendation of the physician who had treated him during the 9 months following his attack. The physician had cautioned that the atmospheric changes associated with air travel could have adverse effects on Mr. Shoaf's heart condition. The travel order also authorized concurrent travel for Mr. Shoaf's wife and four minor children.

The authorization for surface transportation was granted pursuant to 2 Joint Travel Regulations para. C6001-4g (Change 39, September 1, 1968, as amended, para. C6001-4h, Change 105, July 1, 1974). The version in effect during the times herein pertinent is set forth below:

"g. Medical Reasons Precluding Air Travel. An employee will not be required to travel by air if such

mode of transportation is medically contra-indicated. A medically contra-indicated condition is not limited to physical disability. If a traveler has a bona fide fear or aversion to flying, to the extent that serious psychological or physical reaction would result, this may be a basis for the issuance of a medical certificate precluding travel by aircraft. Appropriate medical authority at a military installation will be responsible for determining the propriety of issuance of such a medical certificate. The employee and the official directing travel will each be furnished a copy of the written medical determination."

The record further indicates that, during the times in question, there were no American-flag passenger vessels departing Korea, and that the most direct route was by ship from Pusan to Sasebo, Japan, thence by train to Yokohama, Japan, and finally, by ship from Yokohama to the United States. Mr. Shoaf departed Pusan on July 10, 1971, and arrived at Sasebo on July 11. He claims that, upon arriving at Sasebo, he reported immediately to the U.S. Navy and discovered that the Army Command in Korea had failed to advise the Navy of his scheduled arrival, resulting in a 2-day delay in order to secure train passage to Yokohama.

Mr. Shoaf departed Sasebo on July 13 and arrived at Yokohama on the following day. He states--

"On arriving in Yokohama I immediately checked in with my family at the Army Passenger Terminal at North Pier and again found the Army Command in Korea had failed to notify the Army or Navy in Yokohama of our arrival or travel plans. I protested as a long delay would have had my four children home late to start school and they agreed to get me on the first available vessel from Yokohama to San Francisco. They booked us passage on the President Cleveland but by being late we were unable to obtain the accommodations we were entitled to. I requested 4 days leave in Yokohama but spent the entire time waiting transportation thru no fault of my own."

He finally left Yokohama on July 27 and reached San Francisco on August 8, where he had to wait until August 17 for the arrival of his automobile which was being shipped from Pusan at Government expense. The record indicates that the delay in San Francisco was due to non-receipt of orders, without which the motor vehicle could not be shipped.

The settlement action of our Transportation and Claims Division disallowed Mr. Shoaf's claim for per diem for the delays in Sasebo and San Francisco, and for 12 of the 14 days of the delay in Yokohama, plus other claimed expenses not here in issue. The disallowance was based on paragraph 6.10, Standardized Government Travel Regulations, March 1, 1965 (BOB Cir. No. A-7, now the Federal Travel Regulations, FPMR 101-7), which provides as follows:

"Indirect route or interrupted travel. Where for traveler's personal convenience or through the taking of leave there is interruption of travel or deviation from the direct route, the per diem allowed will not exceed that which would have been incurred on uninterrupted travel by a usually traveled route."

The theory behind the disallowance appears to be in part, that since Mr. Shoaf travelled by surface rather than air due to his medical condition, all ensuing delays were attributable to "personal convenience" and therefore noncompensable. The term "personal convenience" is defined neither in the Travel Expense Act of 1949, as amended, 5 U.S.C. §§ 5701 et seq., nor in the applicable regulations. In the instant case, the employee had suffered a serious heart attack and had been carried on sick leave for several months following the attack. His attending physician noted that he had developed a heart symptom during a recent commercial plane flight and therefore recommended that he be allowed to travel by ship. Based on this recommendation, surface transportation was properly authorized in accordance with the above-quoted regulations.

Also, while we may assume that the delays in Sasebo and Yokohama would not have occurred but for the claimant's medical condition since he would otherwise have travelled by air to California, the medical condition was not the direct cause of the delays. From all indications in the record, the claimant was ready, willing, and able to proceed directly according to schedule, the delays being attributable to administrative oversight on the part of the Government. We note that claimant had requested 4 days leave in Yokohama. If he could have obtained earlier passage but for his leave, the resulting delay would then clearly have been attributable to personal convenience. Cf. 41 Comp. Gen. 196, 198 (1961). However, there is no indication in the record that any such earlier passage was available.

In these circumstances, and in the absence of a more specific prohibition in JTR, we do not believe the interruptions in travel may properly be termed "for traveler's personal convenience," and we conclude, therefore, that Mr. Shoaf is entitled to additional per diem for the delay in Sasebo and for 10 of the 14 days of the delay in Yokohama.

While Mr. Shoaf's appeal did not specifically question the disallowance of per diem for the delay in San Francisco, we believe the issue merits reconsideration. As noted above, the delay in San Francisco was due to nonreceipt of orders which precluded timely shipment of claimant's automobile from Pusan, a situation beyond the control of the claimant. Since claimant's destination was Indiana, and the transportation of Mr. Shoaf's wife and four children was involved, we believe he was warranted in waiting a reasonable time for the arrival of his automobile in San Francisco. Also, the travel orders authorized the use of a privately owned automobile as advantageous to the Government. Accordingly, Mr. Shoaf is also entitled to per diem for the 9-day delay in San Francisco.

Finally, Claimant says that the amount of per diem appears low in view of the fact that he was accompanied by his wife and four children. In this connection, we point out two pertinent provisions of the governing regulations. Paragraph 6.1, SGTR, March 1, 1965, defines "per diem allowance" as follows:

"The per diem in lieu of subsistence expenses includes all charges for meals, lodging, personal use of room during daytime, baths, all fees and tips to waiters, porters, baggagemen, bellboys, hotel maids, dining room stewards and others on vessels, hotel servants in foreign countries, telegrams and telephone calls reserving hotel accommodations, laundry, cleaning and pressing of clothing, fans and fires in rooms, and transportation between places of lodging or business and places where meals are taken * * *."

Thus, expenses for hotel accommodations and tips were properly disallowed. Paragraph 2.2c(3), Attachment A, BOB Cir. No. A-56, June 26, 1969, provides that per diem shall not be paid for members of the immediate families of employees "assigned to posts of duty outside the continental United States returning to places of actual residence for separation." Per diem was thus properly limited to the employee.

A settlement for the additional amounts indicated herein will issue in due course.

R. F. KELLER

AC-100 Comptroller General
of the United States