

**DECISION**



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

FILE: **B-184746**

DATE:

AUG 17 1976

MATTER OF: **Major , USAF**

**DIGEST:**

Member's claim for temporary lodging allowance is allowed for first 10-day period beginning September 30, 1972, as authorized by subparagraph M4303-2c(1) of the JTR (change 235, September 1, 1972), since he did register with the housing officer upon arrival as required in subparagraph M4303-2b(1), item 2; however, member's claim for additional temporary lodging allowance beyond this period is denied since member failed to keep the housing officer periodically informed at least every 10 days of his progress in obtaining such quarters as required in subparagraph M4303-2b(1).

This action is in response to a request by Major , USAF, SSAN , for reconsideration of a settlement by our Transportation and Claims Division (now Claims Division) dated January 31, 1975, which disallowed his claim for temporary lodging allowance (TLA) for himself and his dependents for the period September 30 to November 27, 1972.

The record shows that the member received a permanent change of station assignment to Aviano, Italy, by Special Orders AA-999 dated April 18, 1972, as amended by Special Orders AA-2626, dated August 15, 1972, with delayed concurrent travel of dependents. The record further indicates that the member arrived at Aviano on August 24, 1972, pursuant to such orders, and his dependents arrived on September 30, 1972.

By letter dated February 2, 1973, the member's request for TLA was disapproved by the Chief, Plans Division, United States Air Force, based upon the fact that the member substantially failed to comply with applicable Air Force Regulations and Joint Travel Regulations which in effect required him to document his search for permanent quarters and report his progress at finding adequate housing to the housing officer.

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By letter dated January 28, 1974, the member indicates that he aggressively tried to find housing during the period in question and that he did not comply with the regulations requiring him to report to the housing office on the advice of his commander who confirmed in an undated message that because of the member's special work commitment he was directed to concentrate his energy and his time to the maximum extent possible towards accomplishing the unit mission.

By settlement dated January 31, 1975, the Transportation and Claims Division disallowed the member's claim based on the absence of the required determination by the overseas commander that it was necessary for the member and his dependents to occupy hotel or hotel-like accommodations, the absence of the statement of nonavailability of Government quarters, and the member's failure to report as required to the housing officer.

By letter dated July 15, 1975, the member requested reconsideration of his claim. He states that the nonavailability of Government quarters in Aviano and the need for his family to occupy hotel or hotel-like accommodations was never challenged by anyone so that the absence of the required determination of the necessity to occupy hotel or hotel-like accommodations and the statement of nonavailability of Government quarters was not ever an issue. The member further states that he should be entitled to a minimum of 10 days of TLA since he in fact reported to the housing officer upon his arrival on August 25, 1972, without the obligation to report again for 10 more days after he first requested entitlement to TLA. He also expressed the view that since the Joint Travel Regulations provide that the overseas commander is responsible for administering the requirements precedent to payment of the TLA, the Government should bear the responsibility for the negligent or erroneous acts or omissions of its officers and employees. He also indicated that the letter dated June 26, 1972, which listed instructions to newly arrived accompanied personnel concerning TLA entitlements was not applicable to him since, while he arrived in August 1972, and was immediately briefed on TLA, he did not request such payments until September 30, 1972. He further indicates that the regulations concerned were ambiguous since the Joint Travel Regulations required that the housing officer be kept informed every 10 days and the Air Force Regulations required that the housing officer be informed of the member's progress every 7 days and that, in sum, his claim should be reconsidered.

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A temporary lodging allowance is one of several overseas station allowances authorized pursuant to the provisions of 37 U. S. C. 405, the purpose of which is to partially reimburse a member for costs incurred by him while serving on active duty in an overseas area which are invariably in excess of the normal quarters and subsistence allowances prescribed by law for a member of a particular grade and length of service. Additionally, that section gives the Secretaries of the services concerned broad authority to prescribe regulations governing such allowances.

Paragraph M4303 of the Joint Travel Regulations (change 235, September 1, 1972), promulgated thereunder, provides in subparagraph 1, that temporary lodging allowances are authorized under the law to a member:

- "1. upon initial arrival (reporting) at a permanent duty station outside the United States and pending assignment of Government quarters, or pending completion of arrangements for other permanent living accommodations when Government quarters are not available \* \* \*"

Subparagraph M4303-2b(1), items 1 and 2, provide that the overseas commander will advise the member upon arrival, of his responsibility to aggressively seek permanent quarters and to follow up and review the member's progress at least every 10 days and that the member is to register with the housing officer upon arrival and report his progress in obtaining permanent housing at least every 10 days.

Subparagraph 2c(1), making specific reference to subparagraph 2b(1) item 1, provides that the period of entitlement of a member to TLA will not exceed 60 days, but recognizes as an initial period for which TLA may be paid before the overseas commander's first review, the first 10-day period.

In the present case, the record shows that the member had been briefed on the requirements for entitlement to TLA on August 25, 1972, at which time he certified that he understood the housing acquisition procedures at Aviano, and that he would keep the overseas commander or his authorized representative informed of any change in his status. Thus, it is our view that the member

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reasonably complied with all requirements relating to the initiating of TLA and that under the language of the before-cited regulations was entitled to TLA for the first 10-day period beginning September 30, 1972.

With respect to the remainder of the period claimed, the record shows that even though the member signed the briefing interview statement certifying that he understood the continuing nature of his obligation to report to the base TLA monitor ( 0-day intervals were agreed upon), he failed to comply with those requirements.

With regard to the member's contention that the reason why he did not make these follow-up visits to the TLA monitor for periodic review of his progress to acquire permanent housing was due to the advice of his unit commander, it is regrettable that such advice was given and acted upon. Since the conditions and requirements under which TLA may be paid are clearly set out in the JTR's, any advice given which is contrary to those regulations, by one not authorized to so act, does not serve as a legal basis upon which a later claim against the United States may be recognized.

Accordingly, the action taken by our Claims Division in this case, while sustained, is modified to allow the member TLA payment for the first 10-day period beginning September 30, 1972, if otherwise correct.

R. F. KELLER

(Deputy      Comptroller General  
                 of the United States