

DECISION



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

32

FILE: B-184846

DATE: MAR 1 1976

MATTER OF: Captain , USAF, Retired

DIGEST:

Member who occupied visiting officers quarters (VOQ) during July 14-August 25, 1970, incident to permanent change of station, is not entitled to temporary lodging allowance (TLA) since at that time the VOQ was considered a Government appropriated fund activity, the occupancy of which under then applicable regulations precluded TLA. Fact that VOQ was changed to a nonappropriated fund activity effective November 1, 1970, in which case partial TLA is authorized, would not provide retroactive entitlement for prior periods since real changes in accounting and operations of VOQ were required and made when change in status of VOQ occurred.

This action is in response to a letter dated August 5, 1975, from Captain , USAF, Retired, , requesting reconsideration of his claim, for temporary lodging allowance (TLA) for the period July 14 through August 25, 1970, which was disallowed by our Transportation and Claims Division by settlement dated January 21, 1974.

The record indicates that incident to a permanent change of station to RAF Woodbridge, England, Captain resided with two dependents at the Woodbridge visiting officers quarters (VOQ) during the period July 14 through August 25, 1970. It appears that he paid service fees for his lodging. He indicates that such lodging was of the hotel or hotel-like variety which did not have on-premises cooking facilities. He also indicates that during that time he inquired as to the propriety of his receiving TLA while at Woodbridge. He was informed that TLA was not payable because the VOQ was considered Government quarters operated with appropriated funds. Captain indicates that he later learned that the status of the VOQ was changed effective November 1, 1970, to a non-appropriated fund activity so that reduced TLA would be payable from that date.

gjb

B-184846

The result of this change was to allow the payment of reduced TLA under the provisions of 1 Joint Travel Regulations, para. M4303-3d (change 187, August 1, 1968), on and after November 1, 1970.

Captain filed a claim for TLA for the period of July 14 through August 25, 1970, which was considered doubtful by the Air Force and was transmitted to our Transportation and Claims Division for settlement. By Transportation and Claims Division January 21, 1974 settlement Captain claim was disallowed because during the period covered by his claim there was no authority to pay TLA when quarters occupied were under the jurisdiction of the Government and operated with appropriated funds.

In his August 5, 1975 letter requesting reconsideration of his claim Captain states that the November 1, 1970 change in status of the VOQ was only an official recognition of the fact that the VOQ had been supported and operated by nonappropriated funds for several years prior to November 1970. In support of that contention he enclosed a copy of a September 22, 1972 opinion of an Assistant Staff Judge Advocate which indicates that for several years prior to November 1970, the VOQ had been run by the Base Billings Fund, a nonappropriated fund activity. That opinion also indicates that although appropriated funds had been used to purchase supplies, furniture and services, nonappropriated funds had been used to pay for maid and janitorial service and to improve the quality of the facilities.

Under the authority of 37 U.S.C. 405 (1970), TLA was payable in accordance with 1 JTR para. M4304-1 (change 199, August 1, 1969) for the purpose of partially reimbursing a member for the more than normal expenses incurred at hotels or hotel-like accommodations and public restaurants upon initial arrival at a permanent duty station outside the United States and pending assignment to "Government quarters." A partial TLA was authorized when a member occupied a VOQ operated with nonappropriated funds, under the following provision of 1 JTR para. M4303-3d (change 209, June 1, 1970):

"When hotel or hotel-like accommodations are occupied in guest houses, exchange hotels, or similar transient facilities such as visiting officer's quarters, under the jurisdiction of the Government and operated with nonappropriated funds, the amount of the temporary lodging allowance will be equal to one half of the daily amount of the temporary lodging allowance * * *" (Emphasis added.)

B-184846

Therefore, under the provisions of paragraphs M4303-1 and M4303-3d, supra, the VOQ must have been "operated with nonappropriated funds" in order for Captain [redacted] to have been entitled to TLA.

The record shows that during the period in question the quarters occupied by Captain [redacted] apparently were considered as being operated with appropriated funds and not as a nonappropriated fund activity. For that reason TLA was not allowed members occupying those quarters at that time.

The record shows that in October 1970 a billeting fund study was conducted at Woodbridge to determine the effects of converting the VOQ to a nonappropriated fund activity. In a report dated October 22, 1970, it was recommended that such a change take place. Various criteria were set out in the report that the new operation would have to meet in order for the conversion to be approved by the Air Force. Despite the fact that no physical changes might appear as a consequence of change to a nonappropriated fund activity, the study shows that certain accounting and financial changes were required by applicable regulations. See AFR 176-1, July 30, 1968. Differing requirements, reporting procedures, and accounting systems had to be utilized for each of the two designations. It was also necessary to convert certain positions filled by military personnel to nonappropriated fund positions.

The study recommendation was followed and the facility was designated as a nonappropriated fund activity on November 1, 1970, by the local commander. Thus, it appears that although some non-appropriated funds may have been used in operating the VOQ prior to November 1, 1970, the change that was accomplished on that date was a real one, without which the facility could not qualify as a nonappropriated fund activity and thus TLA would not be authorized prior to such change. Compare B-175775, July 27, 1972. Since the change appears to have been effective November 1, 1970, and Captain [redacted] claim covers a period prior to that date, he is not entitled to TLA under the regulations then in effect. Compare B-166935, June 19, 1969.

Accordingly, the settlement of our Transportation and Claims Division is sustained.

B. E. Keller

Deputy Comptroller General
of the United States