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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20542

FILE: B-195586

DATE: July 15, 1980

MATTER OF: Dewain Blessinger, CW3, USA

DIGEST: A member may not be reimbursed for travel expenses incurred due to extra travel to obtain passports for a permanent change of station where no travel orders are issued authorizing such extra travel. Also, the charge to leave for the time the member spent obtaining the passports is a matter within the discretion of the service and will not be disturbed.

This is in response to an appeal from a settlement of our Claims Division dated June 26, 1979. The issues presented are whether a member of the Army should be reimbursed for travel expenses incurred for extra travel to Washington, D.C., to obtain passports for his dependents, and whether leave was properly charged for the 2 days the member spent obtaining the passports. Since no travel orders were issued authorizing a trip to Washington, D.C., travel expenses may not be reimbursed and leave charges may be allowed to stand as a proper administrative determination.

Claim

The record shows that Chief Warrant Officer Dewain Blessinger, USA, is claiming reimbursement for the travel and is requesting restoration of leave charged incident to a permanent change of station from Fort Stewart, Georgia, to Berlin, Germany. On May 23, 1978, while on leave prior to departure for Berlin, Mr. Blessinger was notified that the Pentagon in Washington, D.C., had never received the paperwork for his dependents' passports. In order to obtain the passports in time for a port call of June 9, 1978, Mr. Blessinger traveled with his dependents to Washington, D.C., where he spent May 24 and May 25, 1978. Mr. Blessinger alleges that he requested an amendment to his orders allowing him to stop at the Pentagon but this request was apparently denied. Mr. Blessinger's claim for reimbursement of the expenses of his stay in Washington, D.C., was denied by our Claims Division and annual leave charges for May 24 and May 25, 1978, were not disturbed.

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The statutory authority for payment of travel and transportation allowances contained in 37 U.S.C. § 404 provides that under regulations prescribed by the appropriate Secretaries, members of the uniformed services shall be entitled to receive such allowances for travel performed or to be performed "under orders". Paragraph M3000-1 of Volume 1 of the Joint Travel Regulations (JTR) provides that no reimbursement for travel is authorized unless orders by competent authority have been issued for such travel. A competent travel order is defined in paragraph M3001 of 1 JTR as a written instrument issued by proper authority directing a member or group of members to travel between designated points.

Members are entitled to travel and transportation allowances only for travel performed while actually in a travel status under the provisions of paragraph M3050 of 1 JTR which provides that members shall be deemed to be in a travel status while performing public business pursuant to competent travel orders. If competent orders are not issued there is no basis for payment of travel and transportation allowances. B-168087, November 21, 1969. Therefore, Mr. Blessinger is not entitled to travel expenses incident to his trip to Washington, D.C., since this trip was not performed pursuant to competent travel orders.

The travel orders that were issued may not be retroactively amended due to the well established rule requiring vesting of legal rights and liabilities when travel is performed under orders. The only exception to this rule is where an error is apparent on the face of the original orders or where the relevant facts and circumstances indicate that a previously intended provision was inadvertently omitted. See 51 Comp. Gen. 736 (1972) and B-191681, November 21, 1978.

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The facts in this case do not meet the requirements of the exception since there has been no showing of error or inadvertence with regard to the original issuance of the orders in question. Therefore, the general rule prohibiting retroactive modification of the orders applies.

The applicable statutory authority for entitlement, accumulation and use of leave for members of the Armed Forces is contained in 10 U.S.C. 701 and 704.

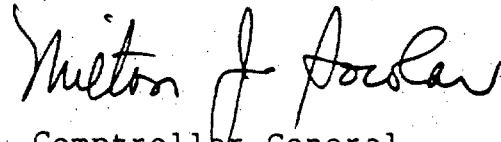
We have held that the accounting for leave is a matter which should be determined administratively by proper application of the leave laws for members of the Armed Forces. B-189776, November 23, 1977. Due to the broad discretionary powers given the Secretary concerned to prescribe implementing regulations by 10 U.S.C. 701 and 704, such administrative determinations will not be questioned in the absence of evidence showing them to be clearly in error. B-189776.

The policies governing the member's leave in this case are set forth in Army Regulation 630-5. Paragraph 4-8a of this regulation provides that personnel on leave en route to overseas assignments who are awaiting passports and who have contacted the losing organization "may" be temporarily attached to the nearest installation until documentation is received. The purpose of this provision is to insure that the member is not required to use leave when through no fault of his own, the necessary documentation is not available prior to expiration of his leave.

Thus, the applicable regulations provide for the situations such as the present case where the member was delayed due to the unavailability of passports. Why this procedure was not followed in the present case, is not clear from the record before us. However, this matter is properly within the discretion of the Army and since the charging of leave is not clearly in error we will not question it here.

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The settlement of our Claims Division is hereby affirmed.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States