DECISION

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

FILE: B-210970 DATE: October 4, 1983

MATTER OF: Warrant Officer John W. Snapp, USMC

DIGEST:

1. The Joint Travel Regulations provide that when a service member is ordered to attend courses of instruction at an installation for 20 weeks or more, that installation constitutes his permanent duty station. Thus, orders issued to a Marine which were intended to assign him to courses of instruction at Quantico, Virginia, for more than 20 weeks constituted valid permanent change-of-station orders, and the assignment could not properly be classified as temporary duty on the basis that it might later be, and in fact was, curtailed to less than 20 weeks.

2. Legal rights and liabilities in regard to per diem and other travel allowances vest when the travel is performed under orders, and such orders if valid may not be canceled or modified retroactively to increase or decrease the rights which have become fixed under the applicable statutes and regulations. Consequently, if a service member completes a permanent change-of-station move under valid orders, those fully executed orders are not susceptible to cancellation upon the curtailment of the permanent assignment at a later date. Instead, the member's further reassignment upon his completion of the curtailed assignment could properly be accomplished only through the issuance of new permanent change-of-station orders.

3. Permanent change-of-station orders may be canceled at any time before the orders have been fully executed, that is, before all of the travel and transportation activities involved in the relocation

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have been completed. Hence, when a Marine traveled to Quantico, Virginia, under permanent change-of-station orders and the orders were later canceled after his assignment there was curtailed, the cancellation was proper because in the particular circumstances involved the Marine had not yet been afforded an opportunity to exercise his statutory right to relocate his dependents and household goods as part of his permanent change-of-station move, and the orders had thus not yet been fully executed.

4. When a service member is in the process of making a permanent change-of-station move and his orders are canceled before the move is completed, he is then generally entitled simply to travel and transportation allowances sufficient to cover expenses incurred in undertaking the canceled move and expenses involved in returning to the original permanent duty station. However, there is nothing to preclude a service member in that situation from being ordered to perform a temporary duty assignment before returning to the permanent station. Therefore, when a Marine's permanent change-of-station orders for assignment at Quantico, Virginia, were properly canceled, it was also then proper to give him a temporary duty assignment at Quantico prior to his return to his original permanent duty station.

5. When permanent change-of-station orders are canceled and are replaced by temporary duty orders, the temporary duty orders become effective on the date they are issued and may not be backdated to increase or decrease retroactively the vested travel and transportation entitlements which had accrued to the member's

credit under the canceled orders. Temporary duty orders issued to a Marine in those circumstances therefore became effective on the date of their publication on April 2, rather than on March 14 as stated in the orders.

The Disbursing Officer, 2d Force Service Support Group (Rein), Fleet Marine Force, Atlantic, Camp Lejeune, North Carolina, presented the questions. We have been asked whether temporary duty allowances are payable to a Marine who traveled to Quantico, Virginia, under permanent change-of-station orders which were then canceled and replaced by temporary additional duty orders. The request has been assigned Control Number 83-6 by the Per Diem, Travel and Transportation Allowance Committee. In the particular circumstances presented, permanent change-of-station allowances are payable for travel performed by the Marine under the original orders which were canceled, and temporary duty allowances are payable for the period after the issuance of the new temporary additional duty orders.

Background

On March 5, 1981, orders labeled "Permanent Change of Station" were issued transferring Warrant Officer John W. Snapp, USMC, from Camp Lejeune, North Carolina, to Quantico, Virginia, where he was directed to attend Warrant Officer Basic Course 1-81, followed by a Data Systems Officer Course. The orders stated that the two courses constituted a period of training in excess of 20 weeks. The orders also referred to Quantico as a "temporary duty station," and stated that transportation of dependents and shipment of household goods were not authorized until "establishment of permanent duty station."

In compliance with these orders, Mr. Snapp departed Camp Lejeune on March 9, 1981, and traveled alone by private automobile to Quantico, where he reported for duty on March 15. On April 11 he was informed that his assignment at Quantico would terminate upon his completion of the 13-week Warrant Officer Basic Course, and that he would not participate in the second of the two courses of instruction originally scheduled. At the same time, he received two new sets of written orders. The first set canceled the original

permanent change-of-station orders he had received in March. The second set of orders, which stated that they were effective "On or about 14 Mar 81," directed him to proceed from Camp Lejeune to Quantico for 13 weeks of "temporary additional duty," and to return to his permanent duty station at Camp Lejeune upon the completion of the temporary assignment. These new orders had been issued on April 2, 1981, but were not delivered to him until April 11 because of administrative delay.

In compliance with the new orders he had received, Mr. Snapp returned to Camp Lejeune on June 19, 1981, after completing the 13-week Warrant Officer Basic Course at Quantico. Throughout the time in question his dependents remained at the family's permanent quarters near Camp Lejeune. There is no indication that he ever received authorization to move his dependents and household goods to Quantico.

After his return to Camp Lejeune, Mr. Snapp submitted a travel voucher claiming temporary duty allowances for the entire period from March 9 to June 19, 1981, on the basis of his temporary additional duty orders. In requesting a decision concerning the payment that may properly be approved on that voucher, the Disbursing Officer essentially questions the validity of the temporary additional duty orders which were issued to Mr. Snapp in April, since there is no indication that his original permanent change-of-station orders were invalid or erroneous at the time they were issued in March.

General Entitlements under Permanent Change-of-Station and Temporary Additional Duty Orders

Section 404 of title 37, United States Code, generally provides for payment of travel allowances to a member of a uniformed service who performs travel under orders upon a change of permanent station, or while on a temporary assignment away from his designated permanent duty station. Section 406 of the same title provides that a service member who is ordered on a permanent reassignment is entitled to transportation of dependents and household effects, but this entitlement does not extend to a member ordered to perform a temporary duty assignment.

Implementing regulations are contained in Volume 1 of the Joint Travel Regulations (1 JTR). Those regulations define "temporary duty" as "[d]uty at one or more locations, other than the permanent station, at which a member performs temporary duty under orders which provide for further assignment * * * to a new permanent station or for return to the old permanent station upon completion of the temporary duty." The term "temporary additional duty" is defined as a form of temporary duty involving one journey away from the member's assigned duty station and direct return to the starting point upon completion of the additional duties prescribed. App. J, 1 JTR. When a member is performing temporary duty while he is away from his permanent duty station, he is deemed to be in travel status and is thus entitled to travel allowances, including a per diem to cover the cost of quarters, subsistence and other expenses arising during all periods of temporary duty and travel. Paras. M3050-2, M4200-1, and M4202-1, 1 JTR.

The regulations further provide that a member performing duties at his permanent duty station is not entitled to a per diem because he is not in a travel status. Para. M4201-4, 1 JTR. See also Matter of Browne, B-189601, December 30, 1977. However, a member traveling from one permanent duty station to another under permanent change-of-station orders is in a travel status and is entitled to a mileage allowance for travel performed by private automobile. 1 JTR, paras. M3050-2, M4151, and M4201-1.

Validity of Original Permanent Change-of-Station Orders

Whether duty may be properly classified as permanent or temporary is generally a question of fact to be determined from the orders directing the assignment or the purpose and duration of the assignment itself. See, e.g., 53 Comp. Gen. 44, 46 (1973); and Matter of Myers, B-187744, October 25, 1977. However, concerning training assignments the Joint Travel Regulations specifically state that when a service member is ordered to attend one or more courses of instruction at a single installation for a cumulative duration of at least 20 weeks, that installation constitutes his permanent duty station regardless of the terms of the orders involved. App. J, 1 JTR. We have held that under this provision of the regulations, orders issued to a service member which are intended to assign him to courses

of instruction at an installation for a continuous period of 20 weeks or more constitute valid permanent change-of-station orders, and the possibility that the assignment might later be curtailed is not a proper basis for classifying the assignment as temporary duty. 37 Comp. Gen. 637 (1958). See also 46 Comp. Gen. 852 (1967).

In addition, we have long and consistently held that provisions of travel orders which do not conform to the applicable statutes and regulations are ineffective and cannot create an otherwise unauthorized entitlement to travel allowances. See, e.g., Matter of Willis, 59 Comp. Gen. 619, 621 (1980); Matter of Sutphen, 57 Comp. Gen. 201, 203-204 (1978); and Matter of Andros Island, B-201588, March 25, 1981.

In the present case, the orders originally issued to Mr. Snapp in March 1981 were for a training assignment at Quantico, Virginia, for a period in excess of 20 weeks, and there is no indication that the orders were prepared in error or that a shorter assignment was actually intended at the time. Hence, they constitute valid permanent change-of-station orders, notwithstanding the inconsistent provisions they contained which referred to Quantico as a "temporary duty station" and which placed restrictions on the transportation of Mr. Snapp's dependents and household goods. It follows that under those orders Mr. Snapp was entitled to allowances for his personal travel, and the transportation of his dependents and household goods, to his new permanent duty station at Quantico. However, those orders provided no entitlement to per diem for him for periods after his arrival at Quantico.

Cancellation of Permanent Change-of-Station Orders

It is well established that legal rights and liabilities in regard to per diem and other travel allowances vest when the travel is performed under orders, and that such orders may not be canceled or modified retroactively to increase or decrease the rights which have become fixed under the applicable statutes and regulations unless error is apparent on the face of the orders, or all the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended had been omitted through error or inadvertence in the preparation of

the orders. See, e.g., Matter of Fritz, 55 Comp. Gen. 1241, 1242 (1976); 47 Comp. Gen. 127, 130 (1967); and 44 Comp. Gen. 405, 407-408 (1965).

Consistent with this rule, we have held that permanent change-of-station orders may not be canceled after all the travel and transportation activities required to complete the permanent move have been accomplished and the orders have been fully executed, when there is no indication that the orders were materially in error when issued. See Matter of Adler, B-204210, April 5, 1982. This is so even if the individual concerned has not used his entitlement to have his dependents and household goods relocated as part of the permanent change-of-station move, where it appears that the individual was given an opportunity to relocate them but elected not to do so for personal reasons. See Matter of Drossel, B-203009, May 17, 1982. After the permanent change-of-station move has been fully completed, the permanent assignment may be terminated or curtailed at any time thereafter because of official necessity or other reason, but this is done through the issuance of new permanent change-of-station orders and cannot properly be accomplished through the publication of orders which purport to cancel the original orders and retroactively transform the entire arrangement into a temporary duty assignment. See 34 Comp. Gen. 427 (1955); Matter of Zahrt, B-205403, January 8, 1982; and Adler and Drossel, cited above.

On the other hand, permanent change-of-station orders may be canceled at any time before they have been fully effected or executed, that is, before all of the travel and transportation activities involved in the relocation have been completed. Cancellation of the orders in those circumstances is valid, and the statutes and regulations applicable to that situation specifically authorize travel and transportation allowances for return to the original permanent duty station. See 37 U.S.C. 406a; and paras. M4156 (case 4), M7051, and M8014, 1 JTR.

As indicated, in the present case the permanent change-of-station orders Mr. Snapp received in March 1981 were not issued in error and constituted valid orders. Hence, in our view those orders could not properly have been canceled after Mr. Snapp completed his permanent change-of-station move and the orders were fully executed. Therefore,

the question is whether the orders had been fully executed in April when the action was taken to cancel them.

If Mr. Snapp had been authorized transportation for his dependents and household goods to his permanent duty station at Quantico in March 1981, and he had either moved his family there or elected to have his family remain in North Carolina for the duration of his assignment, then it would have been our view that his permanent change-of-station move had been completed in March and that his permanent change-of-station orders could not have been canceled. Compare Matter of Drossel, cited above. If that had occurred, the only proper method available for returning him to permanent duty in North Carolina would have been through the issuance of new permanent change-of-station orders reassigning him from Quantico to Camp Lejeune. Compare Matter of Zahrt, cited above.

However, Mr. Snapp's orders as written prohibited the concurrent transportation of his dependents and household goods when he traveled to Quantico on permanent assignment in March 1981, and there is no indication that he was then afforded an opportunity to exercise his statutory right to relocate them at any time before action was taken to cancel the orders in April. Our view is that Mr. Snapp's permanent change-of-station move remained incomplete in April because of this, so that the orders remained susceptible of cancellation. Hence, we conclude that the action taken to cancel the permanent change-of-station orders was valid.

Validity of Temporary Additional Duty Orders

As mentioned, when a service member is in the process of making a permanent change-of-station move and his orders are canceled before the move is completed, he is then generally entitled simply to travel and transportation allowances sufficient to cover expenses incurred in undertaking the canceled move and expenses involved in returning to the original permanent duty station. See 37 U.S.C. § 406a; and paras. M4156 (case 4), M7051, and M8014, 1 JTR; cited above. However, there is nothing to preclude a service member in that situation from instead being ordered to perform a temporary duty assignment. Moreover, we have specifically held that when a service member commences travel on a permanent assignment which is

then converted into a temporary assignment before the permanent change-of-station move is fully effectuated, entitlement to per diem becomes fixed upon the issuance of the temporary duty orders notwithstanding any delays in the actual delivery of those orders to the member. See 53 Comp. Gen. 78 (1973).

In the present case, therefore, we have no basis to question the validity of the temporary additional duty orders which were published on April 2, 1981, and which were later delivered to Mr. Snapp on April 11, except for the entry in those orders stating that they were effective "On or about 14 Mar 81." We consider that entry invalid, since if given effect it would result in an improper retroactive increase in the travel allowances which had become fixed and payable under his previous orders. Compare 47 Comp. Gen. 127, 130, cited above. Hence, we consider the effective date of Mr. Snapp's temporary additional duty orders for travel allowance purposes to be the date they were issued on April 2, 1981. Compare 53 Comp. Gen. 78, cited above.

Amounts Payable on Travel Voucher

For the foregoing reasons, we conclude that Mr. Snapp is entitled to permanent change-of-station allowances for travel performed in compliance with his original permanent change-of-station orders. These would include a mileage allowance for his travel from Camp Lejeune to Quantico by private automobile between March 9 and 15, 1981, but would not include per diem. 1 JTR, paras. M3050-2, M4151, M4201-1, and M4201-4. We also conclude that Mr. Snapp is entitled to temporary duty allowances for all periods of duty and travel performed from the date his temporary additional duty orders were issued on April 2, 1981, to the date of his return to Camp Lejeune on June 19, 1981. These would include per diem, and also a mileage allowance for his return travel by private automobile. 1 JTR, paras. M3050-2, M4200-1, M4202-1, M4203-4, and M4205.

Accordingly, the voucher and related documents are returned for further processing consistent with the conclusions reached in this decision.

for Milton J. Socolar
Comptroller General
of the United States