

DECISION



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

FILE: B-221201

DATE: July 10, 1986

MATTER OF: Chief Warrant Officer James W.  
Gilliam II, USA

DIGEST:

A military member's waiver of his entitlement to transportation allowances incident to his attendance at a training course is ineffective where the travel was directed by the service and not permissive. While the Joint Travel Regulations make provision for elimination of or reduction in per diem under certain conditions, no provision is made for waiving the transportation allowances in such a case. The member was directed to travel on temporary duty and he is entitled to be reimbursed for his airfare to attend the training.

The question presented in this case is whether a waiver of travel entitlements executed by an Army member prior to performing temporary duty is to be given effect.<sup>1/</sup> As will be explained below, the waiver is ineffective in this case.

Background

Chief Warrant Officer James W. Gilliam II, a physician assistant assigned to duty at Fort Clayton, Panama, was issued temporary duty travel orders on October 3, 1984, authorizing him to travel from Fort Clayton to the West Indies and return to attend a conference relating to his duties as a physician assistant. Prior to issuance of his travel orders, Mr. Gilliam executed a waiver of all entitlement to Government-paid travel to and from the conference. His travel orders did provide for him to receive per diem and authorized \$450 for the conference registration fees.

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<sup>1/</sup> This decision is issued in response to a request from Major Leonard L. Greisz, Finance and Accounting Officer, Headquarters, 193d Infantry Brigade (Panama). The Per Diem, Travel and Transportation Allowance Committee has assigned it control number 85-36.

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The Army paid the per diem and conference fee as provided for in the travel order. Subsequently, however, Mr. Gilliam filed a supplemental travel voucher seeking reimbursement of the \$557 round-trip airfare he paid for the trip. The finance officer questions whether he may make payment to Mr. Gilliam for the airfare.

#### Analysis

The waiver Mr. Gilliam executed is provided for in Health Services Command Regulation 1-1, dated September 14, 1981. In an appendix to this regulation, it is explained that generally individuals such as Mr. Gilliam are "authorized to attend one planned health care related professional experience each year subject to funding availability." The appendix goes on to authorize full or partial waiver of transportation and travel allowances subject to certain terms and conditions.

In Mr. Gilliam's case, the waiver he executed was consistent with the terms and conditions specified in the appendix to the regulations. Nevertheless, the finance officer questions whether the waiver was effective, and he calls our attention to two of our decisions concerning waiver of travel and transportation entitlements.

The first case involved a member of the Coast Guard Reserve who voluntarily accepted a 120-day assignment to active duty for training which was contingent upon waiver of per diem. We ruled that his waiver of per diem, executed so as to receive an assignment he requested and under conditions he desired, was effective. Lieutenant Commander James H. Eder, USCGR, B-184704, November 28, 1975. In so ruling we relied on a specific provision in the Joint Travel Regulations regarding per diem. Under this regulation, the Secretary of the military department concerned could authorize no per diem or reduced rates of per diem below the maximum provided for by regulation when the circumstances of the travel or duty to be performed so warranted and were peculiar to the Department concerned. 1 Joint Travel Regulations (JTR), para. M4205-7 (change 252, February 1, 1974), now para. M4207-4. In that case the Coast Guard was found to have acted under that authority delegated by the Secretary of Transportation to the Commandant of the Coast Guard.

In the second case, involving an Army member, we found that although per diem in a lesser amount than provided for in the regulations was specified in the travel orders, the reduction was ineffective because the Secretary of the Army had not authorized the reduction under the circumstances concerned. 53 Comp. Gen. 454 (1974). That is, the purported reduction was not consistent with the requirements of 1 JTR para. M4205-7 and hence was of no force and effect. 53 Comp. Gen. at 457.

The statutory authority for the travel and transportation allowances prescribed for members of the uniformed services for travel performed under orders away from their designated post of duty on public business is 37 U.S.C. § 404. Under this statute the Secretaries concerned may prescribe "the conditions under which travel and transportation allowances are authorized" and "the allowances for the kinds of travel," within certain limitations. 37 U.S.C. § 404(b). See also 37 U.S.C. § 411. Pursuant to this authority, the Secretaries concerned have promulgated the Joint Travel Regulations prescribing temporary duty travel allowances. The provisions of 1 JTR applied in the two cases discussed above, including the paragraph providing for no per diem or reduced per diem if properly authorized, were prescribed under this statutory authority.


The two cases illustrate that a valid reduction of a travel entitlement may be made only if authorized under the implementing regulation. In the present case, we are not concerned with a reduction or waiver of per diem but rather a member's entitlement to be furnished with or reimbursed for transportation. The Joint Travel Regulations, which are the Secretaries' regulations implementing the statute, make no provision for waiving the entitlement to transportation allowances for a member traveling on temporary duty. Thus, the Health Services Command's regulation purporting to provide for such a waiver was unauthorized and without effect.

Travel allowances are to reimburse members for expenses incurred in complying with the travel requirements imposed on them in regard to the needs of the service. See Private Vincent A. Manaois, 63 Comp. Gen. 621, 623 (1984). Therefore, if the travel is for the benefit of the service and the member is directed to perform the travel, he is

entitled to be reimbursed in accordance with the regulations. See Ensign Cheryl R. Dallman, USNR, et al., 64 Comp. Gen. 489, 491 (1985); 49 Comp. Gen. 663, 665-666 (1970). If, however, the travel is performed in whole or part for personal benefit or convenience under permissive orders (orders with which the member need not comply), then the member must bear the cost of the travel even if the service concerned receives some incidental benefit. 64 Comp. Gen. at 492.

As the above discussion illustrates, if a member is on official travel as directed by the service concerned, he is entitled to receive the statutorily authorized entitlements. The Health Services Command determined that the attendance at the training course involved here was of sufficient importance to the service that it was considered official duty and temporary duty orders directing travel were issued. Thus, in these circumstances there was no legal basis under which the member could waive his transportation entitlement.

Accordingly, Mr. Gilliam is entitled to be reimbursed for his airfare, not to exceed the cost of commercial air transportation if procured directly by the service.

  
for Comptroller General  
of the United States