



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20543

2

30927

13-277676

MAY 17 1973

Captain W. A. Bayliss  
Finance and Accounting Officer  
Through Office of the Comptroller of  
the Army  
Department of the Army

Dear Captain Bayliss:

We refer to your letter dated March 27, 1972, with enclosures, forwarded here by first endorsement dated December 19, 1972, from the Per Diem, Travel and Transportation Allowance Committee (PDTATAC Control No. 72-63), in which you request an advance decision as to the propriety of payment of a claim for per diem by a member who was authorized four days' temporary duty and ten days' administrative absence while performing duties as Homotown Assistant Recruiter.

By Special Orders Number 202 dated October 13, 1971, Headquarters, the United States Army Medical Training Center, Fort Sam Houston, Texas, Private Jonathan W. Strickland was reassigned on a permanent change of station from Fort Sam Houston to Valley Forge General Hospital, Phoenixville, Pennsylvania, with a reporting date of November 15, 1971. The orders authorized, in connection with the Homotown Assistant Recruiter Plan 28, temporary duty at M3 Atlanta, Georgia, with duty station at RS Covington, Georgia. Reporting date at the TDY station was October 18, 1971, and the period of temporary duty was given as approximately four days (two days prior to and two days after administrative absence). Purpose of the temporary duty was to perform as Assistant Recruiter under the supervision of the USAFED permanent party recruiter.

Special Instruction: (d) to the above order provides:

EM authorized 10 days administrative absence at no expense to the government while performing duties as Homotown Asst Recruiter. Adm abs will commence upon arrival at the RS and terminate upon departure from the RS. Per diem not authorized during the period of adm abs.

Special Instruction (h) of the same order provides that "EM will report to M3 Atlanta Ga."

091938

~~478302~~

BEST COPY AVAILABLE

In a message dated July 1, 1971, the Continental Army Command advised various installations, including Fort Sam Houston, concerning the Homestown Recruiter Plan 28. Paragraph 3 of said message stated:

Individuals selected as Homestown Recruiters will be placed on orders authorizing administrative absence, with TDY enroute, in their respective hometowns. The period of TDY and administrative absence combined will not exceed 14 days. Administrative absence will commence upon arrival at the Recruiting Station and terminate upon departure from the Recruiting Station. The period of administrative absence will normally be 10 days. Per diem will not, repeat, will not be authorized during the period of administrative absence.

It thus appears that the orders of October 13, 1971, concerning the assignment of Private Strickland to Homestown Recruiting duty were issued in compliance with the message of July 1, 1971.

The record indicates that Private Strickland departed Fort Sam Houston on October 15, 1971, and arrived in Atlanta, Georgia, October 16, 1971. The member stated he did not report to R/S Atlanta since October 16 and 17, 1971, was a weekend. On Monday, October 18, 1971, he reported directly to RS Covington, Georgia, instead of R/S Atlanta as stated in his orders. However, Private Strickland was telephonically processed in by R/S Atlanta in accordance with a telephone call from the Covington Recruiting Station. The morning report for R/S Atlanta indicates the member's attachment under the Homestown Recruiter Assistant Plan effective October 18, 1971. He was released from attachment effective October 29, 1971.

It appears from the record that Private Strickland initially submitted a claim for per diem for four days' temporary duty which was administratively denied on the basis that his temporary duty was to commence upon arrival at R/S Atlanta with administrative absence to commence upon arrival at and terminate upon departure from RS Covington and since he never reported to R/S Atlanta his period of temporary duty was not accomplished. It therefore was concluded that no per diem was due him.

Private Strickland thereafter submitted a voucher requesting per diem for the period October 19 to 28, 1971, during which he was performing duties as Assistant Homestown Recruiter. It is noted that while the voucher indicates that the member requests payment for PCS travel, remarks on the form state that it is for additional payment of per diem

for the period October 19 to 28, 1971. Further, the voucher is not signed and dated by the member.

Army Regulation 630-5 governs personnel absences of members of the Army. Paragraph 11-1 of the regulation defines "administrative absence," as differentiated from leave or pass, as an authorized absence from post or place of duty for the purpose of attending or participating in activities of a semiofficial nature. Paragraph 11-2 provides that commanders authorized to grant absence or leave under this regulation may authorize the administrative absence of military personnel for periods not to exceed 10 days.

Examples of activities considered to be of a semiofficial nature are stated in paragraph 11-3 as those which a service member should perform as being in the best interest of the service such as: (1) attendance at meetings of organizations provided there is a definite relationship between the service member's professional background, his military duties, and the subject matter of the conference or meeting; (2) participating in competitive sports events; (3) attendance in response to a subpoena, summons or request in lieu of process as a witness at a state criminal prosecution or criminal investigative proceeding which involves a matter of substantial public interest. We do not believe the administrative absence in the instant case comes within the scope of the above regulation.

The pertinent statute, 37 U.S.C. 404(a) provides that under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances upon a change of permanent station, or otherwise, or away from his designated post of duty.

Paragraph 13003-2a of the Joint Travel Regulations defines the term "temporary duty" as duty at one or more locations, other than the permanent station, at which a member performs temporary duty under orders, which provide for further assignment, or pending further assignment to a new permanent station or for return to the old permanent station upon completion of the temporary duty.

Whether an assignment to a particular duty station is temporary or otherwise is a question of fact for determination from a consideration of the orders under which the assignment is made as well as the character of the assignment itself particularly with reference to such items as its duration and the nature of the duty. 24 Comp. Gen. 667 (1945); 36 *id.* 757 (1957). While an administrative evaluation of the character of the assignment, as reflected in the orders directing its performance, ordinarily is given considerable weight in such a determination, it is

E-177676

not conclusive in the matter when other available evidence is considered sufficient to indicate the existence of a contrary factual situation.

In the present case the orders directed the member to perform two days' temporary duty followed by ten days' administrative absence and concluding with an additional two days' temporary duty. While the duty assignment at Covington, Georgia, was in the area of the member's hometown, he nevertheless was required under the orders, as Assistant Hometown Recruiter, to perform recruiting duties during the entire period of the administrative absence. It is our view that the assignment was primarily for the benefit of the Government and not solely for the benefit of the member.

Moreover, while the orders of October 13, 1971, contain the statement that per diem is not authorized during the period of administrative absence we are aware of no authority which would restrict the payment of per diem by the order issuing authority in the circumstances of this case. In this connection, the Army Finance Center in first endorsement dated March 17, 1972, determined that any duty performed at Atlanta or Covington was temporary in nature and TDY per diem was payable.

Accordingly, on the record before us the member is entitled to per diem for temporary duty commencing October 18, 1971, and continuing until he was released on October 29, 1971. The voucher and supporting papers are returned herewith and if the voucher is amended on the basis indicated, payment thereon is authorized, if otherwise correct, less any advance payments not previously adjusted.

Sincerely yours,

Paul G. Deabling

For the Comptroller General  
of the United States