

PLM-11
Mr. Kramer 13523

DECISION



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

[Entitlement to Reimbursement of Travel Expenses]

FILE: B-196049

DATE: April 21, 1980

MATTER OF: Colonel Bernard E. Clark, USMC

- DIGEST:
- (1) Member of the Marine Corps travelled by privately owned vehicle from his home in Springfield, Virginia, to Quantico, Virginia, in order to perform temporary duty. Member's travel is interstation travel and therefore payment of his travel allowance is governed by 37 U.S.C. 404 (1976), and the implementing regulations.
 - (2) Member of the Marine Corps travelled from his home in Springfield, Virginia, to Quantico, Virginia, in order to perform temporary duty. Member travelled without written temporary duty travel orders issued in advance. Although 37 U.S.C. 404 requires travel to be authorized by written orders the fact that the travel was required by the member's duty assignment and that his travel was subsequently approved in writing by competent authority as being advantageous to the Government is sufficient to authorize his travel and entitle him to reimbursement under 37 U.S.C. 404.
 - (3) The Joint Travel Regulations may be amended to expand the definition of the term "area" in paragraph M4500-2 to reflect the view that the area intended to be covered under 37 U.S.C. 408 for reimbursement for travel in the vicinity of a duty station is the normal commuting area of the station concerned. However, in implementing the proposed amendment an arbitrary

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mileage radius should not be established in setting up the local commuting areas of permanent and temporary duty stations.

The issue is whether Colonel Bernard E. Clark, a member of the United States Marine Corps, is entitled to be reimbursed for travel expenses under the provisions of 37 U.S.C. 404 (1976), or 37 U.S.C. 408 (1976), when he travels from his permanent duty station in Arlington, Virginia, to perform temporary duty at the Marine Corps Development and Education Command, Quantico, Virginia. For the reasons stated below Colonel Clark's travel is interstation travel and therefore payment of his travel allowance is governed by 37 U.S.C. 404 (1976), and the implementing regulations.

The question was presented for an advance decision by the Disbursing Officer, Naval Research Laboratory, Washington, D.C. The matter was approved by the Per Diem, Travel and Transportation Allowance Committee, which assigned it PDTATAC Control No. 79-33 and forwarded it here along with a proposed change in the Joint Travel Regulations which is contingent upon the decision reached in this case.

Colonel Clark's Case

The facts as presented indicate that Colonel Bernard E. Clark's permanent duty station was and is the Office of Naval Research, Arlington, Virginia. During the period April 19, 1979, through June 15, 1979, Colonel Clark periodically travelled from his home in Springfield, Virginia, to the Marine Corps Development and Education Command, Quantico, Virginia, in order to carry out his assigned duties. Colonel Clark made these trips with his personally owned vehicle (POV). He travelled directly from his home rather than from his permanent duty station since his home is 15 miles closer to Quantico. Also, each time he travelled to Quantico he did so without formal written temporary duty (TDY) orders.

Colonel Clark contends that his travel should be characterized as local travel in and around his permanent duty station as provided for in 37 U.S.C. 408 (1976), and volume 1 of the Joint Travel Regulations (1 JTR) paragraph (para.) M4500 et seq. and wishes to be reimbursed on that basis. The Navy Regional Finance Center, on the other hand, argues that Colonel Clark's travel should be characterized as if he travelled under TDY travel orders and should be reimbursed under the provisions of 37 U.S.C. 404 (1976), and its implementing regulations.

Both the Finance Center's contention and Colonel Clark's contention center around whether Quantico, Virginia, is to be considered within the "metropolitan area" surrounding Arlington, Virginia, Colonel Clark's permanent duty station. A resolution of whether Quantico is within or outside the metropolitan area surrounding Arlington, Virginia, is determinative of whether Colonel Clark is reimbursed under either 37 U.S.C. 404 or 408.

Section 404 of title 37, United States Code (1976), provides that under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed under competent orders when away from his designated post of duty. Paragraph M3050-1 of 1 JTR, promulgated pursuant to that authority, provides that members are entitled to travel and transportation allowances only while actually in a travel status, and that members shall be deemed to be in a travel status while performing travel away from their permanent duty station, upon public business, pursuant to competent orders.

The term permanent station is defined in 1 JTR as the post of duty or official station to which a member is assigned or attached for duty other than "temporary duty" or "temporary additional duty" the limits of which will be the corporate limits of the city or town in which the member is stationed (1 JTR Appendix J).

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Thus, under 37 U.S.C. 404 a member may only be reimbursed travel allowances for trips which take the member beyond his post of duty--the corporate limits of the town or city in which the member is stationed.

While 37 U.S.C. 404 prohibits the reimbursement for travel expenses incurred within the limits of the member's permanent duty station, section 408 of title 37 United States Code (1976), authorizes such payments. Under 37 U.S.C. 408, a member of a uniformed service may be directed, by regulations of the head of the department or agency in which he is serving, to procure transportation necessary for conducting official business of the United States "within the limits of his station." Expenses so incurred by him for the use of a POV at a fixed rate shall be defrayed by the department or agency under which he is serving, or he is entitled to be reimbursed for the expenses.

Part K, Chapter 4, of 1 JTR, implementing section 408, prescribes the basis for reimbursement for travel within and adjacent to permanent and temporary duty stations. Paragraph M4500-2 of 1 JTR provides that the areas in which transportation expenses may be authorized or approved for conducting official business will be within the limits of the permanent and temporary duty station, and the metropolitan areas surrounding those stations which are ordinarily serviced by local common carriers of the cities or towns in which the stations are located, or in the comparable surrounding areas if the posts of duty are not located within recognized metropolitan areas.

Paragraph M4502-1 of the JTR provided at the time involved that when authorized or approved under the conditions of Part K, members who travelled by privately owned automobile were entitled to be reimbursed at the rate of 17 cents per mile.

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In determining the intent of 37 U.S.C. 408 we have held that its purpose is to authorize reimbursement for the specified travel expenses incurred incident to proper intrastation travel when the expenses are not otherwise reimbursable under the interstation travel expense provisions of 37 U.S.C. 404. This is aptly described by the phrase, "within the general area surrounding the duty station ordinarily served by local carrier." 41 Comp. Gen. 588 (1962); and 35 Comp. Gen. 677 (1956).

As stated above, Colonel Clark contends that Quantico, Virginia, falls within the metropolitan area of his permanent duty station. To buttress this argument he has enclosed with his claim a copy of the 1975 revised edition of the Standard Metropolitan Statistical Areas (SMSA), prepared by the Statistical Policy Division of the Office of Management and Budget. On page 56 of the SMSA both Arlington County and Prince William County, in which Quantico, Virginia, is located, are determined to be part of the Washington, D.C.-Maryland-Virginia metropolitan area.

We have been informed by the Per Diem, Travel and Transportation Allowance Committee that they have considered and rejected the SMSA as a measurement of the local travel area. We do not find that decision to be arbitrary, capricious or in conflict with the purpose of 37 U.S.C. 404 and 408. We will not question it. See also 37 U.S.C. 411 (1976). Moreover, we would like to point out that OMB Circular No. A-46, states that: "[the SMSA] shall not be used in the administration of any program unless the head of the agency has determined that such use is appropriate to achieve the program's objective."

Colonel Clark also contends that his travel should fall within the area of his permanent duty station since the duties and functions of his assignment require

frequent and often unanticipated travel to Quantico from Arlington. Thus, he argues that his travel to Quantico from Arlington, is a routine requirement of his job in order to discharge his primary duties rather than directed temporary duty. In essence, Colonel Clark is arguing that Quantico should be considered part of his permanent duty station.

In two previous decisions, we have been asked to determine whether payment of mileage expenses incurred between Quantico, Virginia, and Washington, D.C., or between Quantico, Virginia, and Arlington, Virginia, could be made under 37 U.S.C. 408. See: 52 Comp. Gen. 236 (1972); and 49 Comp. Gen. 709 (1970). In both of those decisions, after considering such factors as the constant travel between Quantico and Washington, D.C., or Arlington, we held that the member's TDY station was not within the immediate vicinity of the member's permanent duty station and therefore the travel performed by the member constituted interstation travel. Payment in the above cases was governed by 37 U.S.C. 404, and the regulations issued pursuant thereto.

In view of the above two cases we find that there is no basis for authorizing reimbursement under section 408 of title 37 in the instant case, and any reimbursement for Colonel Clark's travel is authorized under section 404 of title 37 and the implementing regulations.

In addition to the above, we also hold that in light of the definition of permanent duty station, stated previously, there is no legal basis for Colonel Clark's view that travel from Arlington, Virginia, to Quantico, Virginia, constitutes travel between two points within the assigned duty station. See: 44 Comp. Gen. 445 (1965), and 42 Comp. Gen. 666 (1963). Therefore, Colonel Clark may only be reimbursed under 37 U.S.C. 404.

As was stated above, 37 U.S.C. 404, requires that in order to be entitled to travel and transportation allowances provided by that section the travel must be performed under "orders." Moreover, paragraph M4203-3b of the regulations implementing section 404, describes the policy of the uniformed services to authorize members to travel by privately owned conveyance between the member's residence and his temporary duty station whenever the use of the member's POV is approved as advantageous to the Government.

In the instant case, apparently Colonel Clark's travel was not performed pursuant to written orders issued in advance. However, for him to perform his duties he was required to travel from Arlington to Quantico. Thus, his case is similar to that in 52 Comp. Gen. 236, 239, wherein we considered the fact that the voucher was subsequently approved by competent authority as advantageous to the Government as being, in effect, written orders sufficient to authorize travel. Therefore, we have no objection to allowing him to recover his expenses under 37 U.S.C. 404 at the 7 cents per mile rate. The voucher is returned for payment on that basis.

We note that 1 JTR, paragraph M3003-2, provides for blanket or repeated travel orders. In cases such as this where repeated travel is to be performed it appears that issuance of such orders in advance would be appropriate.

Proposed Amendment to 1 JTR

As is indicated previously, in submitting this case for a decision the Committee also submitted for our consideration an amendment to paragraph M4500-2, 1 JTR. Paragraph M4500-2 defines the area in which transportation expenses may be authorized under 37 U.S.C. 408. The proposed amendment would reflect the Committee's position that the area intended to be covered by Part K, Chapter 4, 1 JTR, is the normal commuting area of the station concerned. The proposed amendment would read as follows:

"The area in which transportation expenses may be authorized or approved for conducting official business will be within the limits of the duty station (permanent or temporary) and the metropolitan areas surrounding those stations which are ordinarily serviced by local common carriers or within the local commuting area of those stations, as determined by the commanders directing the travel involved. It may also include separate cities, towns, or installations located adjacent to or in close proximity of each other and between which travel may be performed and normally is performed by the commuting public on a daily basis within normal commuting hours."

Apparently, it is contemplated that under the revised regulation a determination could be made that Quantico, Virginia, is in the commuting area of Arlington, Virginia.

Basically, we have no objection to the proposed amendment especially in light of the increasing difficulty in determining just what constitutes the metropolitan areas surrounding permanent and temporary duty stations as defined in para. M4500-2, 1 JTR. This difficulty, we assume, stems from the continued widespread growth of the metropolitan areas of the United States and the continued modernization of those areas' mass transportation systems.

We would object, however, if in implementing the proposed amendment the commanders directing the travel involved establish an arbitrary mileage radius in setting up the local commuting areas of permanent and temporary duty stations. Our objection is based upon the fact that the area of travel in the immediate vicinity of a duty station for which reimbursement would be authorized under 37 U.S.C. 408 is not to be susceptible to rigid limitations. See the discussion in 41 Comp. Gen. 588, 590-591 (1962). Our views expressed in that case remain the same.

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Accordingly, para. M4500-2, 1 JTR, may be amended along the lines of the proposed change.

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

Acting Comptroller General
of the United States