

DECISION



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

FILE: B-206503

DATE:

November 30, 1982

MATTER OF: Captain J. R. Huston, USMC

- DIGEST:**
1. The travel of a Marine Corps officer on official business for one day between his permanent duty station at Camp Pendleton, California, and the Marine Corps Air Station at El Toro, California, is to be considered "local" travel since those places have been reasonably determined by the concerned military command authorities to be in the same "local commuting area." Reimbursement for the officer's use of his privately owned vehicle in making the trip is therefore to be provided in a mileage allowance at the rate prescribed for local travel, as authorized by 37 U.S.C. 408 and part K, chapter 4, Volume 1 of the Joint Travel Regulations.
 2. Service members assigned from Camp Pendleton to El Toro, California, under temporary duty orders for periods of more than one day are entitled to per diem allowances if they remain at El Toro since that place is not within the boundaries of Camp Pendleton, their permanent duty station. If they instead commute daily by private automobile from their permanent quarters at Camp Pendleton, they are not entitled to per diem, but they are entitled to a mileage allowance for their daily travel. The mileage allowance is payable at the rate prescribed for local travel, since Camp Pendleton and El Toro have been determined by competent

authority to be in the same "local commuting area." However, the mileage allowance may not exceed the amount of transportation and per diem allowances which would have been payable had they remained at El Toro, when the daily commuting travel is merely permitted for reasons of personal convenience and is not approved as being advantageous to the Government.

3. Travel by private automobile to a passenger terminal in furtherance of a service member's temporary duty assignment to a place distant from his permanent duty station may not properly be classified as "local" travel in the computation of travel allowances. Hence, a mileage allowance at the rate prescribed for local travel may not be paid for trips made between Camp Pendleton, California, and the San Diego, California, airport in furtherance of a Marine's temporary assignment away from his permanent duty station, notwithstanding that Camp Pendleton and San Diego have been determined to be in the same "local commuting area" by Marine Corps command authorities.

The question presented in this case is whether an officer of the Marine Corps is entitled to reimbursement for mileage for one round trip between Camp Pendleton and Marine Corps Air Station (MCAS), El Toro, California, as local or nonlocal travel since different rates of mileage are applicable to each type of travel. We find that the member's travel is properly characterized as local travel and payment for mileage is therefore authorized under 37 U.S.C. 408 at the higher rate of 22.5 cents per mile.

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Several other related questions involving the travel of Marines in hypothetical situations are also presented and resolved.

The request for advance decision was submitted by the Disbursing Officer, Camp Pendleton, California, and was approved and forwarded to this Office by the Per Diem, Travel and Transportation Allowance Committee, which assigned it PDTATAC Control No. 82-6.

Captain J. R. Huston was assigned to permanent duty with the United States Marine Corps 3d Marine Aircraft Wing at Camp Pendleton, California. On September 21, 1981, in the performance of his assigned duties, Captain Huston made a round trip between Camp Pendleton and MCAS El Toro in his privately owned vehicle. The distance involved was 46 miles each way or 92 miles round trip. He claimed a mileage allowance for local travel under the provisions of Wing Order 7300.4, issued on July 6, 1981, by the Commanding General of the 3d Marine Aircraft Wing. The order states that MCAS El Toro is to be considered within the local commuting area of Camp Pendleton for purposes of mileage reimbursement, and that members of the 3d Marine Aircraft Wing commuting from Camp Pendleton to MCAS El Toro on official business and returning the same day may be reimbursed for mileage upon submission of a standard expense form rather than temporary duty orders.

The first issue presented in this case is whether Captain Huston's round trip between Camp Pendleton and MCAS El Toro constituted local travel under 37 U.S.C. 408, or nonlocal travel under 37 U.S.C. 404. If Wing Order 7300.4 properly characterized his trip as travel within the locality of his permanent duty station, then under 37 U.S.C. 408 and its implementing regulations he is entitled to reimbursement at the rate of 22.5 cents per mile. The Disbursing Officer has questioned the correctness of that order and the Commander's determination that MCAS El Toro is in the local area of Camp Pendleton since, "El Toro is not considered to be included in the metropolitan area surrounding Camp Pendleton nor is it serviced by the same local common carrier transportation." As a result, the Disbursing Officer has approved reimbursement for Captain Huston at only 16 cents per mile, the rate

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authorized for nonlocal travel under 37 U.S.C. 404 and its implementing regulations, and has forwarded a supplemental travel voucher covering the difference for our consideration.

Section 408 of title 37, United States Code, provides that a member of the uniformed services is entitled to reimbursement for travel expenses when he is directed, by regulations of the head of the department or agency in which he serves, to procure transportation necessary for conducting official business of the United States within the limits of his station. Reimbursement for the use of a privately owned vehicle is to be at a fixed rate per mile as prescribed by regulation.

Part K, chapter 4, Volume 1 of the Joint Travel Regulations (1 JTR), which implements 37 U.S.C. 408, prescribes the basis for reimbursement for local travel within and adjacent to permanent and temporary duty stations. Paragraph M4500-1, included in part K, provides that officials designated by the services may authorize in advance, or subsequently approve, reimbursement for transportation expenses which are necessarily incurred by members in conducting official business in and around their duty stations. Paragraph M4502-1, 1 JTR (change 335, January 1, 1981), authorizes reimbursement for the use of a privately owned vehicle for local travel at the rate of 22.5 cents per mile, based on speedometer readings or other evidence furnished as to the actual distance necessarily traveled in the conduct of official business.

Paragraph M4500-2, 1 JTR, describes the geographic area covered by part K, chapter 4, as the "local commuting area" of a given duty station, and specifically provides that:

"The local 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 area surrounding that station which is ordinarily serviced by local common carriers or within a local commuting area of that station, the boundaries of which

will be determined by the official directing travel or as prescribed by local Service directives. A local commuting area may also include separate cities, towns, or installations located adjacent to or in close proximity of each other within which the commuting public travels during normal business hours on a daily basis. An arbitrary mileage radius will not be established in setting up the local commuting area of permanent and temporary duty stations."

Prior to 1980, we construed travel "within the limits of the duty station," as that term is used in 37 U.S.C. 408, as travel conducted within the metropolitan area surrounding the station ordinarily served by local common carriers. See 52 Comp. Gen. 236 (1972); 41 Comp. Gen. 588 (1962). However, in Matter of Clark, 59 Comp. Gen. 397, 402 (1980), because of increasing difficulty that had arisen in determining what may constitute the metropolitan area surrounding permanent and temporary duty stations under that standard, we approved an amendment to paragraph M4500-2, 1 JTR, which resulted in the adoption of the current regulation, quoted above. The amendment was designed to change the standard for establishing the limits of local travel under 37 U.S.C. 408 to the "local commuting area" of a duty station and to give the concerned local military commanders the authority to determine the boundaries of the commuting areas. Under this revised standard, separate cities, towns or installations located in close proximity to a duty station, within which the commuting public travels during normal business hours on a daily basis, may be determined by local commanders to be within the area of that duty station for purposes of mileage reimbursement under 37 U.S.C. 408.

Under the authority now conferred by paragraph M4500-2, 1 JTR, the Commanding General, 3d Marine Aircraft Wing, issued the wing order here in question setting forth his determination that for purposes of mileage reimbursement, MCAS El Toro and several other places are to be considered within the local commuting area of Camp Pendleton. We find that the issuance of this order was a proper exercise of his authority and responsibility under

paragraph M4500-2, 1 JTR, and that the places designated in the order are reasonably within commuting distance of Camp Pendleton. Accordingly, we conclude that the order is valid and that Captain Huston should therefore be reimbursed at the rate of 22.5 cents per mile for local travel performed on official business between Camp Pendleton and MCAS El Toro, California, on September 21, 1981. The supplemental travel voucher is returned for payment, if otherwise correct.

The second issue presented in this case is whether the Commander's determination that MCAS El Toro is in the commuting area of Camp Pendleton will affect the payment of per diem allowances to service members traveling from Camp Pendleton to MCAS El Toro for periods of more than one day. The Disbursing Officer's concern arose because paragraph M4201-5, 1 JTR, states that "no per diem allowance is payable for any travel * * * performed within the * * * permanent duty station." Since MCAS El Toro has been determined to be within the local commuting area of Camp Pendleton, he questions the propriety of allowing per diem to service members on extended temporary duty assignments between the two installations. We conclude that payment of per diem is not necessarily precluded in that situation.

A per diem allowance is generally authorized by 37 U.S.C. 404 and paragraphs M4200 et seq., 1 JTR, for a service member during periods when he is performing temporary duty under orders at a place away from his permanent duty station. Appendix J, 1 JTR, defining a permanent duty station, provides that:

"* * * The limits of such post of duty or official station will be * * * the corporate limits of the city or town in which the member is stationed. However, if the member is not stationed in an incorporated city or town, the official station will be the reservation, station, or established area * * * within which the designated post of duty is located. * * *"

Thus, the boundaries of a permanent duty station are more narrowly defined than the limits prescribed for local

travel under 37 U.S.C. 408, not only under the current standard which is the "local commuting area" but also under the previous standard which was the "metropolitan area surrounding the station ordinarily served by local common carriers." Compare Matter of Clark, 59 Comp. Gen. 397 (1980); and 41 Comp. Gen. 588 (1962), cited above.

As the Disbursing Officer notes, the rule is fundamental that per diem is not payable for periods of official travel performed exclusively within the boundaries of a permanent duty station. See paragraph M4201-5, 1 JTR, cited above. See also 52 Comp. Gen. 751 (1973); 49 id. 453 (1970); and 34 id. 427 (1955).

Different rules apply, however, when a service member travels on official business to a place that is near or adjacent to, but not within the boundaries of, his permanent duty station. In that situation, the member is entitled to per diem if he remains at the duty site and does not commute daily between that place and his permanent station or quarters. See, e.g., 37 Comp. Gen. 669 (1958). On the other hand, if he does commute daily because he is ordered to do so, he is not entitled to per diem, but is instead entitled to reimbursement of the transportation expenses incurred in commuting. See paragraph M4201-14, 1 JTR, and Matter of Bond, 54 Comp. Gen. 803 (1975). If the commuting is done by private automobile within the limits established as the "local commuting area" of the temporary duty station under 37 U.S.C. 408 and paragraph M4500-2, 1 JTR, reimbursement is payable in the form of a mileage allowance at the rate prescribed for local travel. See paragraph M4201-14, 1 JTR, and Bond, 54 Comp. Gen. at page 806, cited above. Where the commuting travel is not directed, but is merely permitted by the concerned military command authorities for reasons of the member's personal convenience, the mileage allowance may not exceed the amount of per diem and transportation allowances he would have received had he remained at the temporary duty station. See paragraph M4201-14 and M4211, 1 JTR, and Matter of Gaskin, B-186677, September 29, 1976.

Applying these rules to the second issue raised by the Disbursing Officer, involving the hypothetical situation of a service member assigned under temporary duty orders from Camp Pendleton to MCAS El Toro for several consecutive days, we conclude that the member would be

entitled to per diem if he remained at MCAS El Toro, since he would be at another duty station located outside the boundaries of his permanent station. If he did not remain at El Toro but instead commuted daily by private automobile from his permanent quarters at or near Camp Pendleton, he would not be entitled to per diem but would instead be entitled to a mileage allowance for his commuting travel. The mileage allowance would be at the rate prescribed for local travel under 37 U.S.C. 408 and part K of chapter 4, 1 JTR, since Camp Pendleton and MCAS El Toro have now been determined by competent authority to be within the same "local commuting area." That mileage allowance could not, however, exceed the amount of transportation and per diem allowances which would have been payable had the member remained at MCAS El Toro, if the daily commuting travel was not ordered by the concerned military command authorities, but was instead merely permitted without objection by those authorities for reasons of the member's personal convenience.

The third issue presented in this case concerns travel by private automobile on official business between Camp Pendleton and the San Diego, California, airport. The Disbursing Officer notes that Wing Order 7300.4 states that San Diego is one of the places determined to be within the "local commuting area" of Camp Pendleton. He also notes that in Matter of Verdon, B-191624, July 5, 1978, we expressed the view that the San Diego airport was not a local passenger terminal serving Camp Pendleton. The proper basis for payment of a mileage allowance for travel between Camp Pendleton and that airport is therefore brought into question. By indorsement, the Commandant of the Marine Corps asks whether our decision in Matter of Carrier Terminals, B-198330, May 5, 1981, might have any bearing on the issue.

We have long held that travel to a passenger terminal in furtherance of a temporary duty assignment away from the area of a service member's permanent duty station may not properly be regarded as "local travel" under 37 U.S.C. 408, and that the mileage allowance payable is therefore necessarily restricted to the lower rate for nonlocal travel prescribed under 37 U.S.C. 404. See, e.g., 39 Comp. Gen. 464, 465-66 (1959). In recognition of the fact that the departure and the arrival of a service

member at a passenger terminal located at his duty station may reasonably involve two round trips of the family automobile, round-trip mileage allowances at the "nonlocal" rate have been authorized in that situation in an amount not to exceed the usual taxicab fare for a one-way trip. However, round-trip mileage allowances to more distant passenger terminals have not been authorized. See paragraph M4401, 1 JTR; see also 39 Comp. Gen. 131 (1959), and 47 id., 469 (1968). Hence, in Matter of Verdon, B-191624, July 5, 1978, cited above, we held that two round-trip mileage allowances at the "nonlocal" rate were not payable in the case of a Marine stationed at Camp Pendleton who was driven to and from the San Diego airport when departing for and returning from a temporary duty assignment. The rationale for this conclusion was essentially that there was a passenger terminal located at Camp Pendleton which provided regular bus service to the more distant terminal at the San Diego airport, so that reimbursement for travel to the more distant terminal by taxicab, or round-trip mileage allowances in lieu of a one-way taxicab fare, did not appear reasonable or appropriate. In Matter of Carrier Terminals, B-198330, May 5, 1981, cited above, we said that we would not object to an amendment to paragraph M4401, 1 JTR, to authorize round-trip mileage allowances at the "nonlocal" rate for travel to and from more distant passenger terminals, provided the allowances were limited to the normal cost of a one-way trip by the most practical and inexpensive common carrier, i.e., by bus rather than taxicab. To date the regulations have not been so amended.

Reimbursement for travel to and from common carrier terminals in furtherance of long-distance travel is not subject to the same rules as those governing payment for the use of a privately owned vehicle in furtherance of official business conducted within a local commuting area. Therefore, the inclusion of San Diego within the vicinity of Camp Pendleton for purposes of 37 U.S.C. 408 does not mean that the San Diego airport must be considered the local common carrier terminal for travel to and from Camp Pendleton. The rules for travel to and from a common carrier terminal as previously stated are still applicable. Should the regulations be amended as authorized by Matter of Carrier Terminals, round-trip mileage between Camp Pendleton and the San Diego airport could be

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paid at the "nonlocal" rate, subject to the limitations stated in that decision.

The three issues presented are accordingly decided.

for *Milton F. Arolan*
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of the United States