



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Technical Sergeant James W. Westgate, USAF
File: B-248293
Date: September 10, 1992

DIGEST

Member of the Air Force whose permanent change of station was put on administrative hold so that he could testify in a court-martial proceeding may be reimbursed for 2 days temporary lodging only, as provided by law under the circumstances, and is not entitled to further reimbursement.

DECISION

This decision responds to a request from Technical Sergeant (TSgt) James W. Westgate for reconsideration of his claim for temporary lodging expenses. The Air Force denied the claim stating that, under applicable law, he was not entitled to reimbursement beyond the 2 day allowance he received. Our Claims Group upheld that determination. Since we have no authority to allow payment beyond that provided by law, and because the law does not allow for exceptions no matter how deserving a claim is presented, we must affirm denial.

By order dated October 29, 1990, TSgt James W. Westgate was to make a permanent change of station from Pease Air Force Base in New Hampshire to Lakenheath RAF, United Kingdom, where he was to report by March 31, 1991. Subsequent orders amended the reporting date to December 31, 1990.

TSgt Westgate made arrangements to have his household goods packed and shipped on December 3 and 4, 1990, and planned to depart on December 9. About a week before his household goods were scheduled for packing and shipping, his departure was placed on administrative hold so that he could testify as a witness in a court-martial proceeding which was to begin on December 11, 1990. He consulted the base Transportation Office, and was advised that because the

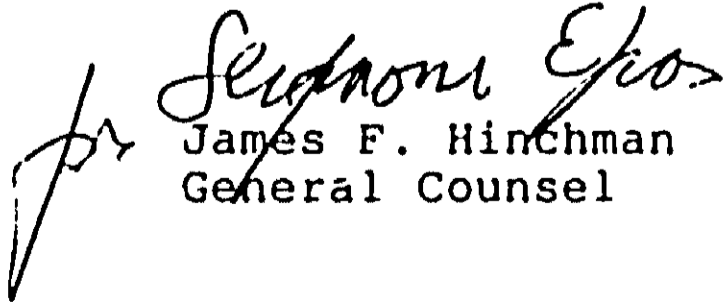
packing and shipping dates could not readily be changed, he should hold to December 3 and 4. After the household goods were shipped, he and his family moved into a temporary lodging facility (TLF) on the base. He received special permission from the housing officials to remain in the TLF while he was in administrative hold status.

The court-martial began as scheduled on December 11, 1990. He testified as scheduled. He and his family left the base on December 17, 1990, promptly after his release as a witness, having spent 13 days in the TLF at a cost of \$24 per day. After he arrived at his duty station, he submitted a travel voucher on which he claimed the 13 days of temporary lodging expenses. He was later reimbursed for 2 of the 13 days only. TSgt Westgate made several appeals. The Air Force denied further payment and the matter was eventually forwarded to our Claims Group. Our Claims Group, by settlement dated January 9, 1992 denied further payment based on the applicable statutes and regulations.

Section 404a of title 37 of the United States Code, which provides for temporary lodging expenses for members of the uniformed services changing permanent station, is clear and unambiguous. It states in pertinent part:

"In the case of a change of permanent station [from a duty station in the United States to a duty station outside the United States], the period for which [subsistence] expenses may be paid or reimbursed may not exceed two days. . . "

Regulations implementing this provision, found in Volume 1 of the Joint Federal Travel Regulations (1 JFTR) Paragraph 5700, et. seq., restate the 2-day limitation. Neither the law nor the regulations make any provision for exceptions. Furthermore, we are not aware of court cases or other decisions granting exceptions, whether or not expenses past the 2-day limit are incurred for reasons beyond the control of the service member. Accordingly, his claim must be denied. We do note, however, that while not mentioned in the case it would appear that TSgt Westgate became entitled to a basic allowance for quarters at the with-dependent rate after he vacated his assigned quarters.


James F. Hinchman
General Counsel