

DECISION

DIGEST - MILITARY - L
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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165

FILE:

DATE: FEB 5 1975

MATTER OF:
B-181396

Travel expenses - CW2

DIGEST:

- (1) Member who was on leave in Atlanta, Georgia, and agreed to perform temporary duty for two days while he was on personal business in Laurel, Maryland, and where orders issued to confirm prior verbal orders, authorized commercial air travel from Atlanta to Fort Meade and then to member's permanent duty station, in Vietnam, may be later modified because the facts and circumstances clearly demonstrate that it was previously determined and definitely intended that no commercial air travel was authorized.
- (2) Member who was on leave in Atlanta, Georgia, voluntarily agreed to perform temporary duty for two days while he was on personal business in Laurel, Maryland, after returning to a leave status and on his return to his permanent duty station his leave orders expired before he could board Government transportation, member is not entitled to reimbursement for cost of commercial air travel to his permanent duty station since no appropriate written orders were issued because paragraph M3000, JTR, states that such reimbursement is not authorized unless orders by competent authority have been issued therefor.

This action is in response to a letter dated March 26, 1974, with enclosures, from CW2, USA, SSAN which was forwarded to our Office by the United States Army Finance Support Agency, Indianapolis, Indiana, requesting reconsideration of our Transportation and Claims Division settlement dated February 20, 1974, which determined that the member was overpaid travel expenses in the amount of \$498.33 for travel performed during the period April 20-27, 1974.

The record shows that by Letter Orders No. 04-0251-72, effective April 6, 1972, the member was authorized ordinary leave for compassionate reasons for 14 days, to allow him to attend the

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funeral of his mother-in-law in Atlanta, Georgia. While on leave in Atlanta, Georgia, the member was contacted by telephone by military authorities at Fort George G. Meade, Maryland, and requested to interrupt his leave to perform temporary duty for two days at Fort Meade during the period of time when the member would be conducting personal business at his second leave address in Laurel, Maryland. It is indicated that the member agreed to this request and performed temporary duty at Fort Meade on April 17 and 18, 1972. He returned to a leave status on April 19, 1972, and departed from Laurel, Maryland, for his duty station in Vietnam on April 20, 1972.

The file further indicates that when the member arrived at Travis Air Force Base, California, he discovered that because of the number of personnel bound for Vietnam, space available seating required a long waiting period. The member states that he had no documents in his possession to establish that he had performed temporary duty and as a result, he had to use his leave orders as authorization for travel. However, it appears that before he could board Government transportation, his leave orders expired, and he reported himself as absent without leave to the Air Police.

In his letter dated March 26, 1974, the member states that after reporting to the Air Police he contacted appropriate military authorities at Fort Meade and requested that proper documentation be provided him to show that he was in a duty status not a leave status. This request apparently was refused. The member also states that an official at Fort Meade told him to take a commercial flight to Vietnam, submit a travel voucher, and "we'll argue over the difference" later. He was then issued a Transportation Request to cover the cost of the commercial air fare of \$293 for his travel from San Francisco to Saigon.

By letter Orders No. 72-027, dated April 12, 1972, issued by the Department of Defense, Special Representative, Military Assistance Command, Vietnam, subsequent to the member's travel to Vietnam, and apparently at the request of the authorities at Fort Meade, the member was authorized to travel from his leave address in Atlanta, Georgia, to Fort Meade, Maryland, for the performance of temporary duty and to return to his permanent duty station in Vietnam upon completion of such duty. Those orders also authorized the payment of per diem in the amount of \$25 and commercial air travel from Atlanta, Georgia, to Laurel, Maryland, and then to Vietnam. Following completion of his travel,

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the member was paid \$282.81, for such temporary duty reflecting the itinerary described in Letter Orders No. 72-027.

This payment to the member was protested by authorities at Fort Meade, who claimed that only per diem in the amount of \$25 was authorized and who requested that Letter Orders No. 72-027 be corrected to show that the member's leave address was Laurel, Maryland, and to reflect that the member was to return to his leave address upon completion of temporary duty. As a result of this request, new Letter Orders were issued and the member reimbursed the Government \$273.96, retaining \$8.85, which represented the proper mileage allowance for travel performed from his leave address and return incident to temporary duty at Fort Meade.

In May 1972, the cost of the commercial transportation from San Francisco to Saigon in the amount of \$293 was withheld from the member's pay. On June 23, 1972, the member submitted a claim for reimbursement of the cost of such transportation. By letter dated December 1, 1972, the United States Army Finance Support Agency, on the basis of the record before them, which apparently included uncorrected Letter Orders No. 72-027, determined that under the provisions of paragraph MA207-2(c) of the Joint Travel Regulations, the member was entitled to transportation in kind or a monetary allowance in lieu thereof from the temporary duty station, Fort Meade, to the permanent duty station, Vietnam. Consequently, payment of travel and per diem from the place the member received temporary duty orders, Atlanta, Georgia, to his temporary duty station was directed and refund of cost of commercial transportation in the amount of \$293 was also directed. This resulted in a total payment to the member of \$523.33.

By letter dated May 23, 1973, addressed to the United States Army Finance Support Agency, the accounting and finance officer at Fort Meade protested this payment to the member and pointed out that corrected Letter Orders No. 72-027 were not considered by the Army when its determination was made and contending that the member agreed to perform the temporary duty while he was on leave in Laurel, Maryland, at a total cost to the Government of \$25 for per diem.

By transmittal dated July 25, 1973, the United States Army Finance Support Agency referred the matter to our Transportation and Claims Division for adjudication and by settlement dated February 20, 1974, our Transportation and Claims Division determined that payment of \$523.33 to the member was not proper.

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By letter dated March 18, 1974, the member was informed that \$498.33 (\$523.33 - \$25 per diem), was to be collected from his pay account. By letter dated March 26, 1974, the member requested reconsideration of our Transportation and Claims Division settlement contending that he is entitled to reimbursement of the cost of commercial transportation from California to Vietnam in the amount of \$293 since, in his view, commercial travel would not have been required if he had not performed temporary duty. The member also contends that Letter Orders No. 72-027, dated April 12, 1972, as originally issued to confirm prior verbal orders, fixed his rights to reimbursement for such travel expenses and later modification of Letter Orders No. 72-027 was improper and in violation of subparagraph 1-3a(3) of Army Regulation 37-106.

Subparagraph 1-3a(3) of Army Regulation 37-106, provides as follows:

"Establishing right to allowances. Travel orders issued and complied with vest in the member the right to allowances authorized by the statutes. No action may be taken administratively to increase or decrease the legal liability of the United States subsequent to performance of all or any part of the directed travel. The terms of an order do not always determine the nature of the travel or services performed thereunder. Each case must be considered individually with the actual circumstances determining the entitlement to the authorized allowances."

The member contends that since Letter Orders No. 72-027, dated April 12, 1974, as originally issued authorized commercial air travel from Atlanta, Georgia, to Laurel, Maryland, and Vietnam, and therefore, his right to reimbursement for the cost of commercial air transportation from California to Vietnam vested when the orders were issued and the later modification of Letter Orders No. 72-027 was in violation of the above-quoted Army Regulation.

The general rule that travel orders may not be revoked or modified retroactively so as to increase or decrease the rights which have accrued or become fixed under the law and regulations, when the ordered travel has already been performed,

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is not for application here because the orders concerned were issued after the travel was performed. Such retroactive orders must reflect accurately what the member was instructed to do less formally before travel was performed. Cf. 23 Comp. Gen. 713 (1944); 24 Comp. Gen. 439 (1944); 44 Comp. Gen. 405 (1965); 45 Comp. Gen. 599 (1966).

The pertinent statute, 37 U.S.C. § 404(a)(1) (1970), provides that under regulations prescribed by the Secretaries concerned, members of the uniformed services shall be entitled to travel and transportation allowances for travel performed under orders upon a change of permanent station or when away from their designated posts of duty. Paragraph M3050-1 of Volume I, Joint Travel Regulations, provides that members shall be entitled to travel and transportation allowances only while in a "travel status" and that they shall be deemed to be in such status while performing travel away from their permanent duty station, upon public business, pursuant to competent travel orders.

Paragraph M3000 provides that no reimbursement for travel is authorized unless orders by competent authority have been issued therefor and that reimbursement for travel is not authorized when travel is performed in anticipation of or prior to receipt of orders. Paragraph M3001 states that a competent travel order is a written instrument issued by competent authority directing a member to travel between designated points. An exception to this requirement is provided for in paragraph M3002 when a verbal order is given in advance of travel and subsequently confirmed in writing, giving date of verbal order, and is approved by competent authority.

This exception is considered to contemplate only those situations where, due to the exigencies of the service, it is not feasible to issue written orders in advance of travel and the deficiency is remedied at the earliest practicable time by the issuance of written confirming orders. The confirming written order, which is in substitution for the written order normally required prior to travel, must itself contain sufficient detail of the verbal order to meet the requirements ordinarily required of valid written travel orders. A mere recitation of what has transpired is not sufficient.

Paragraph M3002-3 of the regulations further provides that orders received by telephone from competent authority must

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be subsequently confirmed by the authority who issued such orders by telephone. This is to be done either by issuance of further orders reducing the telephonic orders to writing or by approval by competent authority of orders written in the field referencing such telephonic orders. Also, it provides that reimbursement for travel expenses under telephonic orders may not be made until such confirmation is obtained.

The record presently before us clearly shows that authorization contained in Letter Orders No. 72-027, as initially issued, for commercial air travel from Atlanta, Georgia, to Laurel, Maryland, and Vietnam or any portion thereof was never intended by either the authorities at Fort Meade or the member. In these circumstances, it appears that the later modification of Letter Orders No. 72-027 was necessary and proper in order to show that the member's leave address was Laurel, Maryland, for the purpose of establishing the proper departure point for temporary duty at Fort Meade and that the member was to return to that leave address upon completion of temporary duty.

The member also contends that he is entitled to be reimbursed for the cost of commercial transportation from California to Vietnam in the amount of \$293 since, in his view, commercial travel would not have been required if he had not performed temporary duty.

The record shows that the member was authorized ordinary leave for compassionate reasons for 14 days to allow him to attend the funeral of his mother-in-law. While travelling for this personal reason the member was authorized to use military sponsored flights on a space available basis but priority of space is given to those travelling on Government business. The member had the responsibility of returning to his duty station prior to the expiration of his leave period. If he could not obtain a military sponsored flight scheduled to return him on time, then it was his responsibility to obtain a commercial flight at his own expense in order to return on time. Even if the member had not voluntarily accepted the temporary duty assignment, he was not guaranteed Government transportation prior to the expiration of his leave orders. No proper orders were issued to the member for commercial travel at Government expense from San Francisco to Vietnam and in the circumstances it does not appear that issuance of such orders would have been proper.

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Accordingly, we must sustain our Transportation and Claims Division settlement dated February 20, 1974.

R.F. KELLER

Deputy Comptroller General
of the United States