

DECISION



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

955

FILE: B-184460

DATE: FEB 28 1974

MATTER OF: Master Sergeant , USAF

- DIGEST:
1. Member's claim for additional temporary lodging allowance (TLA) incident to a permanent change of station to an overseas assignment at RAF St. Mawgan, England, where it is stated that his request for additional TLA was denied by his overseas commander, is not authorized, since under 37 U.S.C. 405 and para. M4303 of JTR's, such overseas commander has sole authority to determine whether member has or will incur undue financial hardship for purposes of this allowance.
 2. Where member's claim for additional housing allowance pursuant to 37 U.S.C. 405 and para. M4301 of JTR's incident to a permanent change of station to an overseas assignment at RAF St. Mawgan, England, is authorized under the regulations, member is entitled to payment thereof for period in question but not to include any period during which the member received a temporary lodging allowance.
 3. Member's claim for reimbursement of expenses for temporary storage of household goods beyond 180 days, incident to a permanent change of station to an overseas assignment at RAF St. Mawgan, England, is not authorized, since para. M8100 of JTR's specifically limits reimbursement, within authorized weight allowance, to 180 days.

This action is in response to a letter received in this Office on July 16, 1974, from Master Sergeant , USAF, SSAN , concerning his claim for reimbursement of extraordinary expenses incurred incident to his assignment to RAF St. Mawgan, England, for the period September 1, 1972, until April 3, 1974.

djb

B-184460

The record shows that by Special Orders No. AB-1558, dated July 28, 1972, the member was assigned on a permanent change of station to RAF St. Mawgan, England. Apparently, the installation at that location was manned almost entirely by Royal Air Force personnel, although a small detachment of the United States Navy was stationed there along with a United States Air Force detachment. It is indicated that the Air Force detachment had no parent unit, and that no personnel housing, finance, transportation, or like services were available.

The record further indicates that as a result of tourism in the St. Mawgan area--particularly during the months of May through October--available houses are usually rented only for 6-month terms so that they may be rented to tourists during the peak season. The record also indicates that before arriving for duty at St. Mawgan, the member telephoned a Navy member who told him that housing was available and that he should bring along his family, his household goods and his hold baggage. Upon arrival, the member discovered that no Government housing was available for Air Force personnel, and due to the tourist trade, practically no non-Government housing was available. As a result, the member contends that he and his five dependents had to reside in a succession of hotels and hotel-like accommodations for a protracted period.

Because of his inability to find adequate housing, Sergeant states that he received a temporary lodging allowance (TLA) for himself and his dependents for the first 60 days (August 29 to October 29, 1972) at St. Mawgan, but that his request for an extension of this allowance was denied. Further, he states that he was not provided a housing allowance until March 1973, and finally, that he incurred costs of \$206.55 for storage of household goods in excess of the time allowable after their arrival in 1972 until September 1973, since it is contended that prior to this time he was unable to find any permanent housing to make delivery of household goods feasible.

With regard to the member's claimed entitlement to additional temporary lodging allowance, such allowance is one of several overseas station allowances authorized pursuant to the provisions of 37 U.S.C. 405 (1970), which grant the Secretaries of the services

B-184460

concerned broad authority to prescribe regulations concerning such allowances. Paragraph M4303 of the Joint Travel Regulations (JTR), promulgated pursuant to that authority provides in part:

"(2) Factors for Consideration in Determining Need for Additional Periods of Temporary Lodging Allowance. * * * the overseas commander designated by the Service concerned will determine, after due consideration of data furnished by the member, whether an undue financial hardship will result if an additional period of temporary lodging allowance is not authorized or approved. Mere personal inconvenience to a member and/or his dependents for any reason will not be used as an influencing factor in the determination. Individual applications for additional periods of temporary lodging allowance must clearly establish the need for continuance thereof. In making his determination, the overseas commander will consider the following:

- "1. the daily amount of temporary lodging allowance the member has received or will receive;
- "2. the daily expenses which have been and the estimated daily expenses which will be incurred for occupancy of hotel or hotel-like accommodations and the utilization of public restaurants;
- "3. the daily amounts of the basic allowances for quarters and subsistence, Family Separation Allowance (Type I)
* * *

The purpose of temporary housing allowance is to partially reimburse a member for the more than normal expenses incurred at hotel or hotel-like accommodations and public restaurants upon the initial arrival at a permanent duty station outside the United States pending completion of arrangements for other

B-184460

permanent living accommodations when Government quarters are not available. If it is determined by the overseas commander that the member has not or will not actually incur any excessive expenses and has not suffered any undue hardship, the request for any additional period of temporary lodging will be disapproved.

Thus, since an overseas commander has sole authority under paragraph M4303-2b(2) of the JTR's to determine whether a member will or has incurred an undue financial hardship at any given time, in the absence of such approval by the commander as required by the JTR's, the payment of TLA in the present case, after October 29, 1972, is not authorized.

Housing allowance is another of the several overseas station allowances authorized pursuant to the provisions of 37 U.S.C. 405, *supra*. Under the provisions of paragraph M4301-1 of the JTR's, housing allowances are authorized for the purpose of defraying the average excess costs experienced by members on permanent duty outside the United States. The excess costs are derived by comparison of the average cost of living and housing for similar members in the United States. Subparagraph M4301-3a of those regulations provides in part that housing and cost-of-living allowances are not payable on any day the member is entitled to a temporary lodging allowance and subparagraph M4301-3c(2) provides that housing allowances are payable to a member with dependents at all times except when Government quarters are assigned to a member and his dependents.

It appears that a housing allowance was authorized for St. Mawgan, England, for the period in question. The military pay history of the member, however, indicates that the member received no allowance for housing from October 30, 1972, until March 1973. Accordingly, since a housing allowance was established for St. Mawgan, England, for the period of the member's claim, payment of a housing allowance is authorized, not to include any period during which the member received TLA.

In connection with the member's request for reimbursement for cost of excess storage, it is specified in paragraph M8100-1 of the JTR's that temporary storage is storage which is authorized in connection with a shipment of permanent change-of-station weight allowance of household goods. As to time limitation,

B-184460

paragraph M8100-2a of those regulations provides that a member will be entitled to temporary storage at Government expense for a period of 90 days in connection with any authorized shipment of household goods and paragraph M8100-2b provides that when, because of conditions beyond the control of the member, such as nonavailability of suitable civilian housing, household goods in temporary storage at Government expense cannot be withdrawn during the first 90 days, additional storage for not more than an additional 90 days may be authorized in advance or subsequently approved by the transportation officer or such other officer as the service concerned may designate.

While the record indicates that the goods could not be delivered to the member because of practical considerations until September 14, 1973, a time well over the 180-day limit, no authority exists for reimbursement for charges in connection with the storage of the member's goods beyond the period of 180 days. Accordingly, payment may not be made on that portion of the claim.

Concerning the application of the Meritorious Claims Act, 31 U.S.C. 236, that act provides that when a claim against the United States is filed in this Office which may not be lawfully adjusted by use of an appropriation theretofore made, but which claim in the judgment of the Comptroller General contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, it shall be submitted to the Congress with his recommendations. This remedy is an extraordinary one and its use is limited to extraordinary circumstances.

The cases reported for the consideration of the Congress under this act have involved equitable circumstances of an unusual nature which are unlikely to constitute a recurring problem, since to report to the Congress a particular case when similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances.

Based on the information submitted, it is not considered that the member's claim for excess storage allowance has elements of equity of an unusual nature which are unlikely to recur.

B-184460

Accordingly, it is our view that it would not be appropriate for this Office to submit a recommendation to the Congress for relief of Sergeant .

A settlement will be issued to pay Sergeant the additional housing allowance found due under this decision.

H. F. Keller
Deputy⁷ Comptroller General
of the United States