

DECISION

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

FILE: B-164700

DATE: NOV 28 1975

 MATTER OF: Rest stopover en route -
Commander ✓
, USN

DIGEST: Navy member returning from Teheran, Iran, to Washington, D. C., on temporary duty, who departs from Teheran at 5:35 a. m. and completes 7 hours of travel to Rome, Italy, on a trip requiring at least 24 hours' total travel if he is to continue on the same plane or flight, may be allowed recredit of leave and paid per diem for period of rest stopover since officer's action in utilizing stop for rest appears reasonable under the circumstances.

This action is in response to a request for advance decision dated September 30, 1974, from the Disbursing Officer/Director of Military Pay, Navy Regional Finance Center, Washington, D. C., concerning the claim of Commander [redacted] SC, USN, for additional per diem allowance and restoration of leave charged in connection with a rest stopover taken incident to travel from Teheran, Iran, to Washington, D. C. This request has been assigned control number 75-6 by the Per Diem, Travel and Transportation Allowance Committee which forwarded it by endorsement dated February 13, 1975.

The record shows that by Bureau of Naval Personnel Order No. T-13517, dated April 8, 1974, Commander [redacted] was directed to travel on or about April 10, 1974, from Washington, D. C., to Teheran, Iran, and return, for the purpose of performing temporary additional duty (TAD). The record shows that he departed from his residence in Springfield, Virginia, on April 10, and remained in Teheran until his specified duties there were completed on April 16, 1974. Commander [redacted] departed from Teheran on April 17, 1974, at 5:35 a. m. on Pan American Airways flight No. 111, arriving in Rome, Italy, at 10:30 a. m., an elapsed flight time of approximately 7 hours. He remained overnight in Rome and departed for Washington the following day at 12:15 p. m. on the continuation of flight No. 111, arriving at Friendship Airport at 7:47 p. m. and arriving at his residence in Springfield at 9:30 p. m., an elapsed time of approximately 15 hours.

The Navy reconstructed Commander [redacted] return travel to depart from Teheran on April 17 on flight No. 111 and to remain on the continuation from Rome to arrive at his residence at 9:30 p. m.

djb

PUBLISHED DECISION

55 Comp. Gen.

B-184709

on April 17, which requires an actual total travel time of about 24 hours, exclusive of time necessary to travel to the airport in Teheran. His per diem allowance for April 17 was restricted to the amount payable for a member's day of return to his permanent duty station and no allowance afforded for April 18. Also Commander [redacted] was charged leave for April 18. There is no indication in Commander [redacted] TAD order of any urgency with respect to his return to his permanent duty station.

Commander [redacted] in his reclaim contends that in view of his early arising (3 a.m.) to meet the departure flight from Teheran and the duration of his travel, his rest stop in Rome was reasonable and authorized and, therefore, he is entitled to additional per diem allowance for travel on April 17 and 18 and for restoration of leave charged for April 18.

Title 37, United States Code, section 404(a) (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 orders, away from his permanent duty station. Paragraph M4204-3a of Volume I of the Joint Travel Regulations, issued in furtherance of this statute, provides:

"* * * a member will not normally be expected to select a schedule which will require departure between the hours of 2400 and 0600 or arrival between the hours of 2400 and 0600. In selecting schedules, due consideration should be given to duty requirements; duty hours; availability of lodgings at points of origin, destination, or way points; onward transportation; and the personal comfort and well-being of the traveler. Rest stops at way points where there is a change in carrier or mode of transportation may be permitted provided the period of travel already performed is substantial and the exigencies of the Service permit."

In our decision B-173756, December 9, 1971 (51 Comp. Gen. 354), we considered the application of an analogous provision in Volume II, Joint Travel Regulations, relating to civilian employees of the Department of Defense. (Paragraph C1051-2.) We stated there that we interpreted the regulation as intending only to furnish guidelines for

B-184709

use in determining whether in a particular situation the traveler acted in a reasonable manner. In decision B-177897, March 21, 1973, we extended this interpretation to members of the uniformed services, stating as follows:

"Similarly, as to military members, each particular situation should be considered as to whether the traveler in remaining overnight before continuing his travel is acting in a reasonable and prudent manner having regard to the duty performed, the available travel and the need to be at his permanent station at a particular time."

We are of the opinion that a like standard of reasonableness is for application here. Although paragraph M4204-3a of the regulation refers to rest stops incident to a change of carrier or mode of transportation, a literal interpretation of this requirement would result in an arbitrary and unreasonable distinction focused on the means of transportation rather than the travel performed by the member. We therefore construe this requirement not to be a limitation upon applicability of the regulation, but rather a guideline to be considered in determining the reasonableness of the member's stopover.

Commander departed from Teheran at 5:35 on the morning following completion of his TAD, and completed about 7 hours of a total of approximately 24 hours of travel by the time he arrived in Rome. In these circumstances and absent a showing of an urgent requirement for his return to his permanent duty station, it was not unreasonable for Commander to take a rest stopover in Rome.

Accordingly, additional per diem should be allowed and the leave charged for April 18, 1974, should be cancelled.

PAUL G. DEMBLING

Comptroller General
of the United States