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

B-177293

JAN 9 1973

Sergeant , USMC, Retired

Santa Fe, New Mexico 87501

Dear Sergeant :

Further reference is made to your undated letter received in this Office on October 2, 1972, in effect requesting reconsideration of the settlement of this Office dated July 20, 1972, which partially disallowed your claim for dislocation allowance and travel allowances for you and your dependents incident to your hospitalization at the United States Naval Hospital, San Diego, California, and your subsequent release from active duty in the United States Marine Corps on December 31, 1971.

By Headquarters 8th Marine Corps District letter order dated August 11, 1971, as modified by orders dated August 20, 1971, you were directed to proceed on or about August 30, 1971, for temporary additional duty to San Diego, California, for a period of about two days in connection with physical evaluation and appearance before a medical board. Those orders directed that upon completion of that duty you were to return to your unit and resume your regular duties. Travel via commercial air was directed and you were furnished a Government transportation request covering air transportation from your permanent duty station to San Diego with an itinerary which included an open return.

At the time you received those orders you were serving as a Marine recruiter at the El Paso, Texas, recruiting substation of the Albuquerque, New Mexico, Marine Recruiting Station. El Paso, Texas was your permanent duty station and apparently you and your dependents were occupying Government quarters at Fort Bliss (El Paso), Texas.

Pursuant to those orders it appears you traveled to San Diego, California, where the record indicates you were admitted to the United States Naval Hospital on August 30, 1971. Apparently, it was decided to retain you at the hospital beyond the two-day period specified in your orders since the record indicates you were not released to duty from the hospital until November 5, 1971.

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The record also indicates that during your hospitalization you were granted emergency leave for the period September 8 - 14, 1971, during which you returned to El Paso using the return portion of the air transportation procured with the Government transportation request which had been issued pursuant to your orders of August 11 and 20, 1971. Apparently during that leave period, you moved your family from El Paso to Fremont, California. At the expiration of your leave you apparently returned to the United States Naval Hospital at San Diego where you remained until November 5, 1971.

By Headquarters 8th Marine Corps District Special Order Number 85-71 dated September 28, 1971, effective October 1, 1971, you were transferred "by Service Records" from the El Paso recruiting substation to the Marine Corps Recruit Depot, San Diego, for "Administrative purposes while sick" at the United States Naval Hospital, San Diego.

By order of the United States Naval Hospital, San Diego, dated and effective November 5, 1971, you were transferred to the United States Marine Corps Recruit Depot, San Diego, for resumption of duty under authority of paragraph 4020 of the Marine Corps Personnel Manual. Apparently you performed duty at the Recruit Depot until by orders dated November 29, 1971, of the Commanding General of the Recruit Depot and first endorsement of the Commanding Officer, Casual Company, Headquarters and Service Battalion, you were directed to proceed home on November 30, 1971, pending final disposition of physical evaluation board findings. Pursuant to those orders you apparently elected to proceed to Albuquerque, New Mexico, for which you were paid a \$48 mileage allowance.

On December 31, 1971, you were released from all active duty in the Marine Corps and placed on the Temporary Disability Retired List effective January 1, 1972, by orders of the Commanding General, Marine Corps Recruit Depot, San Diego, dated December 20, 1971. The record shows that you selected Santa Fe, New Mexico, as your home incident to the orders placing you on the Temporary Disability Retired List.

The Marine Corps Finance Center forwarded the vouchers and supporting documentation covering your claims for travel allowances for you and your dependents and dislocation allowance to our Transportation and Claims Division for settlement.

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By settlement dated July 20, 1972, pursuant to paragraph M4205-5✓ of the Joint Travel Regulations, you were allowed 3/4 day per diem at the rate of \$11.80 per day (\$8.85) less two meals furnished at Government expense at \$2.35 each (\$4.70) for a total of \$4.15 per diem for August 30, 1971, the day of your initial travel under orders from El Paso to the hospital in San Diego. Pursuant to paragraph M4150-1✓ and M4158-6✓ of the regulations, you were also allowed a mileage allowance at 6 cents per mile for 860 miles for a total of \$51.60 for your travel from your last permanent duty station (San Diego) to Albuquerque and then to Santa Fe incident to your placement on the Temporary Disability Retired List. Also, incident to your placement on that list, and pursuant to paragraphs M7000✓ and M7003-2✓ of the regulations, you were allowed a mileage allowance of \$103.20 for your dependents computed at 12 cents per mile for 860 miles, the distance from San Diego (your last permanent duty station) to Santa Fe, New Mexico.

By that settlement you were thus allowed a total of \$158.95 (\$4.15 per diem plus \$51.60 your mileage allowance plus \$103.20 dependents' mileage allowance) from which was deducted the \$48 mileage allowance you were previously paid for the portion of your travel from San Diego to Albuquerque. Also deducted was the \$54 cost of the Government transportation request you used for your personal travel from San Diego to El Paso while you were in a leave status. Thus the total amount due and payable to you under that settlement was \$56.95.

Your claim for travel allowance incident to your travel from San Diego to El Paso during the period of September 8 - 12, 1971, was disallowed since such travel was performed by you for personal reasons while in a leave status and not in a "travel status" on public business pursuant to competent travel orders as required by paragraph M3050-1✓ by the Joint Travel Regulations. For the same reason you are not entitled to travel allowances for your travel during that period from El Paso to Fremont, California, and return to San Diego.

By settlement of July 20, 1972, you were also denied travel allowances for the travel of your dependents from El Paso to Fremont for the reason that paragraph M7004-1✓ of the Joint Travel Regulations provides that transportation of dependents incident to a member's hospitalization shall be contingent upon a statement by the commanding officer of the receiving hospital that he has evaluated the case and believes that the period of treatment of the member in that hospital can be expected to be prolonged.

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Such a statement was not presented with your claim. Also in that settlement you were advised that paragraph M7000-8 of the regulations provides that transportation of dependents is authorized upon a permanent change of station, except for any travel for dependents performed at personal expense prior to issuance of orders directing a permanent change of station or prior to receipt of official notice that such orders would be issued.

Similarly you were denied entitlement to dislocation allowance incident to your dependents' travel to Fremont, California, on the basis that paragraph M9003-3b of the Joint Travel Regulations provides that such allowance is payable, as for a permanent change of station, to a member with dependents who is transferred from inside the United States to a hospital in the United States for observation and treatment and who relocates his household incident to such transfer provided a statement of prolonged hospitalization has been issued by the commanding officer of the receiving hospital. As is noted above, no such certificate was received with your claim.

By letter of July 25, 1972, the Honorable Joseph M. Montoya, United States Senate, who had expressed interest in your case, was advised of the July 20, 1972, settlement of your claim. In your recent letter you indicate that Senator Montoya's office has advised you to write us and explain why you believe your claim should be allowed in full.

In your recent letter you indicate that in September 1971 the officer in charge of the Albuquerque Recruiting Substation, who was then your officer in charge, telephoned you in the hospital in San Diego and told you that because of the expected long duration of your stay in the hospital you were being transferred to the Marine Corps Recruit Depot in San Diego. You also state that he advised you that you could go to El Paso and bring your family to California.

You indicate that it was pursuant to that advice from your officer in charge that you took emergency leave from the hospital in San Diego during September 8 - 14, 1971, returned to El Paso, arranged to have your furniture placed in storage and moved your family to Fremont, California, where you state they remained until you were sent to New Mexico to await release from active duty. You also state that you had been told to expect to receive your transfer orders in El Paso and you actually did receive them there while you were on leave.

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It appears to be your view that the relocation of your dependents to Fremont, California, was performed under orders and that, therefore, you are entitled to transportation and dislocation allowances incident to such relocation.

Under the statutory authority of 37 U.S.C. 406 and 407 the Joint Travel Regulations (paragraphs M7000 and M9003) provide for the payment of dependents transportation allowance and dislocation allowance under certain conditions incident to a member's permanent change of station. It has long been held that an order to proceed to a hospital for observation and treatment from a duty station within the United States is not a permanent change of the member's duty station since he is not assigned to the hospital for duty. 4 Comp. Gen. 653 (1925), 17 Comp. Gen. 133 (1937), 43 Comp. Gen. 596, 603 (1964) and 48 Comp. Gen. 603 (1969). And, it has been held that there is no basis to conclude that orders directing a "transfer by service records" may be considered as permanent change-of-station orders prior to the time the member is released from the hospital to duty. E-144900, March 27, 1961.

However, as is indicated in the settlement of July 20, 1972, paragraphs M7004-1 and 2 and M9003-3 of the Joint Travel Regulations authorize dependents' transportation allowance and dislocation allowance as for a permanent change of station when the member is transferred from a duty station inside the United States to a hospital for observation and treatment, provided, there is a statement by the commanding officer of the receiving hospital that he has evaluated the case and believes that the period of treatment of the member in that hospital can be expected to be prolonged.

While no such statement was included with your claim and this Office and the Marine Corps Finance Center have been unsuccessful in attempting to locate such a statement, we note that the United States Naval Hospital, San Diego, orders of November 5, 1971, transferring you to the Marine Corps Recruit Depot for resumption of duty, indicate that such action was taken under the authority of paragraph 4020 of the Marine Corps Personnel Manual. That paragraph provides generally in part that when Marine Corps personnel attached to activities within the continental United States are admitted to a service or Veterans Administration hospital which is not located in the vicinity of the organization to which the patient is permanently assigned, he may be transferred by service records to the appropriate Marine Corps activity near the hospital.

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In this regard subparagraph 4020-2 provides in part:

"To determine if an individual is to be transferred, commanders shall consider the probable period of hospitalization and whether or not dependents reside in government quarters. Generally, where the period of hospitalization will be less than 60 days and the administration of the patient can be effectively accomplished by the parent organization, transfer of the hospitalized Marine will not be effected."

You entered the hospital August 30, 1971, and were released November 5, 1971, a period in excess of 60 days. Since you were transferred by service record to the hospital after your arrival there, it seems reasonably clear that the determination was made by personnel at the hospital that your hospitalization was expected to be 60 days or more as provided by the above provisions of paragraph 4020 of the Marine Corps Personnel Manual. Therefore, while a written statement to that effect has not been furnished, we now conclude that there was substantial compliance with paragraphs M7004-1~~x~~ and 2~~x~~ and M9003-3~~x~~ of the Joint Travel Regulations in regard to the statements required to establish entitlement to dependents' travel allowance and dislocation allowance. B-145240, March 31, 1961.

Also, as indicated in the settlement of July 20, 1972, paragraph M7000-8~~x~~ of the Joint Travel Regulations provides that transportation at Government expense is not authorized for any travel of dependents performed at personal expense prior to the issuance of orders or prior to receipt of official notice that such orders would be issued. In this case you apparently moved your dependents to Fremont, California, between September 8 and 14, 1971, prior to September 28, 1971, the date of the orders transferring you by service record to San Diego. However, since you state that you were advised by telephone in September 1971 by your officer in charge that such orders would be issued and you state you actually had received the orders at the time you moved your dependents, it appears reasonably clear that you had official notice of such orders prior to the time your dependents traveled. This view is supported by the fact that such travel was performed only a short time prior to the date of the orders. Therefore, we conclude that there was substantial compliance with paragraph M7000-8~~x~~ of the Joint Travel Regulations.

Accordingly, you are entitled to travel allowance for your dependents' travel from Fort Bliss (El Paso), Texas, to Fremont, California, not to exceed the amount of such allowance applicable to the distance from Fort Bliss to San Diego, California, where you

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were hospitalized. See paragraphs M7004-4✓ and M7057✓ of the Joint Travel Regulations. You are also entitled to dislocation allowance incident to the move of your dependants. We are today issuing instructions to our Transportation and Claims Division for the allowance of that portion of your claim and you should receive a check in due course from the Marine Corps.

By the settlement of July 20, 1972, you were allowed a travel allowance for your dependants' travel from Fremont, California, to Santa Fe, New Mexico, not to exceed the amount applicable to the distance from your last permanent duty station (San Diego, California) to your home of selection (Santa Fe, New Mexico) incident to your placement on the Temporary Disability Retired List. Per paragraphs M7010-1✓ and M7058✓ of the Joint Travel Regulations, that is the maximum to which you are entitled for such travel.

Also, as was indicated in the settlement, you are not entitled to transportation at Government expense or mileage allowances for your personal travel during the period September 8 - 14, 1971, from San Diego to El Paso to Fremont and return to San Diego while you were in a leave status since such travel was performed for personal reasons and not while you were in a "travel status" on official business pursuant to competent travel orders. See paragraph M3050-11✓ of the Joint Travel Regulations issued pursuant to 37 U.S.C. 404.✓ 30 Comp. Gen. 226✓ (1950) and 49 Comp. Gen. 663✓ (1970).

We are advising Senator Montoya by letter of today's date of the action taken in your case.

Very truly yours,

R.F. KELLER

(Deputy) Comptroller General
of the United States