

[B-179404]

**Subsistence—Per Diem—Military Personnel—Temporary Duty—
“Referral Recruiter”**

Army member who received orders as “Referral Recruiter” which did not specify temporary duty for the period of 171 days during which he was to perform recruiting duty at a location away from his permanent station is considered to have been on temporary duty during that period and is entitled to per diem for that period and temporary duty travel allowances for travel to the location where such duty was performed.

**Subsistence—Per Diem—Military Personnel—Competent Travel
Orders—Initial and Subsequent Orders**

Army member who after a period of 171 days of duty as a “Referral Recruiter,” which is considered to be temporary duty, received several temporary duty orders continuing the duty at same location for 5 additional months, in absence of approval for temporary duty in excess of 180 days, in accord with paragraphs M3008-2c and d, 1 Joint Travel Regulations, and paragraph 2-5b, Army Regulations 310-10, is limited to per diem allowances not in excess of 180 days at that location.

In the matter of temporary duty allowances while on Referral Recruiter duty, November 11, 1974:

This action is in response to letter dated April 5, 1973 (file reference ALBFGC-F) with attachments, from the Finance and Accounting Officer, Headquarters 1st Infantry Division (Mech) and Fort Riley, Fort Riley, Kansas 66442, requesting an advance decision regarding the claim of Specialist Fifth Class Joseph E. Flynn, [REDACTED] for temporary duty travel allowances and per diem for the period from March 10 through August 31, 1972, incident to his duty as “Referral Recruiter” under an order that made no provision for temporary duty. The request was forwarded to this Office by endorsement of the Office of the Comptroller of the Army (file reference DACA-CSS-ST) dated July 20, 1973, and endorsement of the Per Diem, Travel and

Transportation Allowance Committee (PDTATAC Control No. 73-39).

By Special Orders No. 68, dated March 8, 1972, Headquarters 1st Infantry Division (Mech) and Fort Riley, Fort Riley, Kansas, Specialist Flynn was assigned duty as “Referral Recruiter” effective March 7, 1972. Special instructions stated: “Duty station with Charleston, WV as Referral Recruiter with duty MOS 00E40.”

Over a year later Special Orders No. 84, dated April 2, 1973, revoked so much of Special Orders No. 68 as pertained to Specialist Flynn citing as authority, “5th Army Message ALACP-FF DTG-242046Z Nov 72 Subject: Retroactive payment to Unit of Choice Canvassers.” In lieu of that order, Letter Order No. 4-6, dated April 2, 1973, Headquarters 1st Infantry Division (Mech) and Fort Riley, Fort Riley, Kansas, directed Specialist Flynn to proceed on temporary duty at Charleston, West Virginia, commencing on or about March 11, 1972, for a period of approximately 171 days (March 14 to August 31, 1972), for the purpose of duty as a “Unit of Choice Canvasser.” Upon completion of temporary duty the orders provided that Specialist Flynn would return to his permanent station. The order also contained the following special instructions:

(a) This order replaces SO #68 Para 22 this Headquarters dated 8 Mar 1972 which did not reflect Temporary Duty status even though individual was Unit of Choice Canvasser performing official duties for U.S. Army. This action was directed by Fifth Army Message ALACP-FF DTG-242046Z Nov 72 Subject: Retroactive payment to Unit of Choice Canvassers.

Concerning the period after August 31, 1972, the record indicates that on October 4, 1972, a Request and Authorization for Military Personnel Temporary Duty Travel (DA Form 662) was issued authorizing Specialist Flynn temporary duty for the month of September 1972. Another DA Form 662 dated October 18, 1972, authorized Specialist Flynn temporary duty effective October 1, 1972, for approximately 92 days. DA Form 662 dated January 8, 1973, continued the temporary duty for an additional 31 days. By DA Form 662 dated February 9, 1973, Specialist Flynn was continued on temporary duty effective February 1, 1973, for 3 days and thereafter was to return to his home station, Fort Riley, Kansas. The above orders were for the same duty at Charleston, West Virginia, as he performed under his original orders of March 8, 1972. The request for decision indicates that Specialist Flynn has been paid per diem for the period from September 1, 1972, through February 6, 1973, and travel allowances from Charleston, West Virginia, to Fort Riley, Kansas.

Travel voucher dated February 21, 1973, submitted by Specialist Flynn indicates that he departed from Fort Riley by private vehicle on March 10, 1972, and that he arrived at Charleston, West Virginia,

on March 13, 1972. Also, that he departed from Charleston, West Virginia, on February 1, 1973, arriving at Fort Riley on February 8, 1973. The voucher dated February 9, 1973, indicates that the member was on leave from February 2 through 4, 1973, and not on duty as indicated in his voucher dated February 21, 1973.

In the request for advance decision the Finance and Accounting Officer referred to Army Regulation 37-106, paragraph 1-3a, as authority for the proposition that no administrative action may be taken to increase the legal liability of the United States subsequent to completion of travel but that a verbal order may be confirmed by means of a properly issued written order. However, it is stated that Letter Order No. 4-6 did not confirm a verbal order previously received.

Paragraph 1-3a(3) of the above regulation states:

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.

In 53 Comp. Gen. 454 (1974) this Office held that a "Unit of Choice" recruiter whose original orders did not specify temporary duty for a period during which he was to perform recruiting duty away from his permanent duty station is considered to be on temporary duty for that period. *See also* decision B-178930, October 1, 1973.

Similarly, although Specialist Flynn's initial orders did not characterize his ordered duty at Charleston, West Virginia, as "temporary," the record indicates that he was ordered to a location distant from his permanent duty station and upon completion of his recruiting duties on behalf of his unit located at Fort Riley, Kansas, he was to return to it. Accordingly, it appears that he was in fact on temporary duty at Charleston on March 14, 1972, and he continued on such duty until August 31, 1972, under the orders of March 8, 1972. The failure to specify temporary duty in the orders of March 8 is viewed as an administrative error. Therefore, he is entitled to receive per diem and temporary duty travel allowances incident to this period of duty, in accord with the Joint Travel Regulations (JTR).

While the request for advance decision concerned only the question of Specialist Flynn's entitlement to temporary duty allowances for the period March 14 through August 31, 1972, a total of 171 days, during which period the member was in a temporary duty status, in view of the member's subsequent temporary duty orders, his duty at Charleston, West Virginia, extended from March 1972 to February 1973, a period of approximately 11 months.

Paragraph M3003-2c, 1 JTR, provides that except when authorized

in accordance with subparagraph d, temporary duty at any one location will be limited to periods not in excess of 6 months. Subparagraph 2d provides that when unusual or emergency circumstances or the exigencies of the service appear to require the assignment of members to temporary duty for periods of more than 6 months under conditions where it would be impracticable or uneconomical to effect a permanent change of station, such cases will be forwarded with a full statement of the facts in the case to the appropriate authority of the service concerned, for authorization.

Army Regulation 310-10, paragraph 2-5b, indicates that no individual will be placed on continuous temporary duty at one location for a period in excess of 180 calendar days without prior approval of Headquarters, Department of the Army.

This Office has been informed that Headquarters 1st Infantry Division (Mech) and Fort Riley submitted a request to Headquarters, Department of the Army, for permission to exceed, for Unit of Choice Canvassers, the 180-day temporary duty limitation established by Army Regulation 310-10. However, this request was not favorably considered.

Since no permission had been granted for Specialist Flynn to be in a temporary duty status in excess of 180 days, there is no authority for payment of per diem allowances in excess of the member's first 180 days at Charleston, West Virginia. *See* 38 Comp. Gen. 853 (1959) and B-173498, November 30, 1971. Accordingly, the member is entitled to payment of per diem allowances for 180 days less such allowances previously received for temporary duty while at Charleston, West Virginia. This is in addition to temporary duty travel allowances for travel from Fort Riley, Kansas, to Charleston, West Virginia, for the period from March 10 through 13, 1972.