

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D. C. 20548

FILE: B-181509

DATE: FEB 5 1975

MATTER OF:

Lieutenant Colonel Harold R. Gammon, USAF -
Claim for Recredit of Leave and Per Diem

DIGEST:

While member on change of permanent station travel arrived Yokota AFB on April 22 but was booked on April 29 flight to Osan AB, Korea (his new duty station), since transportation was available from Yokota prior to April 29 it would appear that the delay until that date was avoidable, charge to leave for delay was proper and per diem is not payable for such delay. 1 JTR M4250-1. However, since member traveled on April 21 and 22 leave should not be charged for April 22 and per diem and baggage handling charges are payable for those days. 1 JTR M4253-1 and M4403. Remainder of claim is disallowed.

This action is in response to an appeal from the settlement of our Transportation and Claims Division which disallowed the claim of Lieutenant Colonel Harold R. Gammon, USAF, [REDACTED], for per diem and recrediting of leave for the period of April 22 through 29, 1971.

Per Special Orders No. AB-19 dated January 6, 1971, Major (now Lieutenant Colonel) Harold R. Gammon was transferred from Korat RTAFB, Thailand, to Osan AB, Korea. The order, as amended on January 22, 1971, stated a reporting date of not later than April 30, 1971.

The record indicates that the member left Korat RTAFB on April 18, 1971, and thereafter took 3 days' leave reporting in Bangkok, Thailand, as directed, to Don Muang AB, Thailand, on April 21, 1971, for transportation to Yokota AB, Japan. Apparently, when the member arrived at Yokota on April 22 and informed the reservation clerk there that he was to report to Osan AB, Korea, not later than April 30, 1971, a reservation was made for an April 29 flight from Yokota to Osan. He apparently remained at Yokota until April 29 when he took the flight to Osan. The record indicates that there were flights available for the vicinity of Osan departing between April 22 and 28. Since flights were available before April 29 the member was charged leave by the Air Force for the period April 22 through 7 p.m., on April 29, 1971.

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The member filed a claim with the Air Force for recredit of leave and per diem for the period of April 22 through 29, 1971. That claim was forwarded by the Air Force Accounting and Finance Center to our Transportation and Claims Division as a doubtful claim. Recommendation as to payment was withheld.

The Transportation and Claims Division disallowed the claim by settlement dated August 1, 1972, for the reason that since the record indicates that transportation was available to the vicinity of Oam before April 29, 1971, the delay at Yokota was avoidable and, therefore; the charging of leave for such delay appeared proper and per diem was not payable.

Colonel Gannon now appeals that settlement apparently because he believes he was in an official duty status during the period of delay, which delay, he believes was the fault of the reservations sergeant at Yokota for not booking him on an earlier flight.

Pursuant to the authority provided in 37 U.S.C. 4041 (1970), paragraphs M4139-1-2 and M4250-1 of the Joint Travel Regulations (1 JTR) authorize the payment of per diem incident to permanent change-of-station travel between points outside the United States. Paragraph M4250-1 (change 196, May 1, 1969) provides, among other things, that per diem is payable for periods of travel performed under competent orders outside the United States except for periods of "delay enroute when classified as leave."

The member's delay en route at Yokota was classified as leave by the Air Force. While he indicates that his delay resulted from a misunderstanding between him and the sergeant to whom he spoke at the reservation desk at Yokota, it seems clear that if he had asked whether there were any earlier flights available the matter would have been clarified and the 8-day delay avoided. Therefore, the Air Force determination that such delay be charged as leave appears reasonable and per diem is not payable for the delay period.

However, Air Force Manual 35-6, December 18, 1969 (the regulation in effect in April 1971 governing travel time) authorizes the computation of travel time on a constructive basis. Also, paragraph 3 of Air Force Manual 35-6 provides that any portion of a day spent in allowable travel is a whole day of travel. Therefore, since it appears that the member

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arrived at Yokota in the morning of April 22, 1971, and could have completed his travel to Osan on that day, April 22, 1971, should not be included as a day of delay chargeable as leave but should be a day of travel time. Accordingly, Colonel Gammon should be recredited with leave for April 22, 1971, and he is entitled to per diem for that day in the amount of \$8 under the provisions of 1 JTR M4253-1 (change 215, December 1, 1970).

Also, included in this claim was claim for per diem on April 21, 1971, for taxi fare (\$3) apparently incurred on April 21, 1971, in traveling from his leave point (Bangkok) to Don Muang AB, and baggage handling charges incurred on April 21, 22 and 29, 1971 (\$1 each). Those items apparently have not been paid nor were they considered in the settlement of August 1, 1972. Under the provisions of 1 JTR M4401-1 the taxi fare from a leave point may not be allowed. The baggage handling charges incurred on April 21 and 22 while the claimant was in a travel status may be allowed (1 JTR M4403), as may per diem for both days. However, the baggage handling charge incurred on April 29, while he was in a leave status may not be allowed.

Accordingly, if otherwise proper, a settlement for the amount due for per diem for April 21 and 22, 1971, and baggage handling on April 21 and 22, 1971, will issue in due course. The remainder of the claim must be disallowed.

R.F. KELLER

Deputy Comptroller General
of the United States