

DECISION



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

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FILE: B-183755

DATE:

JUL 23 1976

MATTER OF: Colonel , USA

DIGEST: A member who, while on temporary duty, voluntarily moves into Government VIP bachelor officer quarters for which the service charge is \$4 per night, may have the authorized per diem increased by only \$2 per night since in accordance with para. M4205-3a(2)(a), Joint Travel Regulations, the amount of the increased per diem incident to such service charge may not exceed \$2. This limitation is applicable even though moving into the Government quarters may result in a savings of per diem to the Government over that which would have been payable had the member occupied commercial quarters.

This action is in response to a letter dated February 18, 1975, from Colonel , USA, , requesting reconsideration of our Transportation and Claims Division (now Claims Division) settlement of February 7, 1975, disallowing his claim for additional Bachelor Officer Quarters (BOQ) fees for the period September 5 through October 7, 1974.

The record shows that by orders dated August 19, 1974, Colonel was ordered to proceed on temporary duty on or about September 3, 1974, from Fort Benning, Georgia, to Fort Benjamin Harrison, Indiana, for a period of approximately 40 days, for the purpose of serving as a member of a Department of the Army Selection Board. The orders stated that Government mess and quarters were not available.

The record further indicates that the member occupied commercial quarters on September 3 and 4, 1974. On September 5, the member voluntarily moved into the VIP BOQ at Fort Benjamin Harrison. He was charged, and paid, a total of \$132, at the rate of \$4 per night for the 33-day period, September 5 through October 7, 1974, during which he occupied the BOQ.

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On October 16, 1974, Colonel [redacted] submitted a travel voucher for the amounts due him for his temporary duty at Fort Benjamin Harrison. In payment of said voucher he was allowed \$2 per day for the 33-day period he occupied the BOQ (\$66) in addition to reduced per diem at the rate of \$10.75 for that period. Colonel [redacted] contends that he should have been allowed the \$132 (\$4 per day) which he had actually paid for his quarters since by voluntarily occupying such quarters he saved the Government additional per diem and local transportation expenses which would have accrued had he remained in commercial quarters.

Travel and transportation allowances for members of the uniformed services on temporary duty are governed by Volume 1 of the Joint Travel Regulations (1 JTR) promulgated pursuant to 37 U.S.C. 404 (1970). Paragraph M4205-3a(2) of said regulation provides in pertinent part:

"Limitation on Reimbursement for Use of Government Quarters

"(a) Other Than Temporary Lodging Facilities.

When Government quarters, other than temporary lodging facilities are used, the per diem authorized will be increased by the amount of the service charge paid not in excess of \$2 * * *."

Since bachelor officer quarters are not temporary lodging facilities under the definition contained in Appendix J, 1 JTR, the maximum authorized increase in per diem when such Government quarters are used is \$2 per day. Colonel [redacted] has been allowed such maximum authorized amount in the settlement of his travel voucher.

While it may be that by voluntarily moving from commercial quarters to Government quarters, Colonel [redacted] reduced the amount of per diem he would have been authorized to receive had he remained in commercial quarters, in the settlement of claims against the United States this Office must comply with the applicable provisions of the governing law and regulations. The fact that the member's actions may have resulted in the Government paying out a lesser amount in per diem does not afford a legal

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basis to allow his claim for an amount in excess of that provided by regulation.

It is noted further, that the member in addition to per diem was provided Government quarters of a very high quality. Thus, although less per diem was paid after the member moved to those Government quarters he used quarters maintained to a high standard by the Government.

For the reasons stated the settlement of February 7, 1975 disallowing the claim is sustained.

{ R. F. KELLER

Comptroller General
of the United States

{ Deputy }