

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D. C. 20548

FILE: B-184466

DATE: JUL 27 1976

MATTER OF: Second Lieutenant , USAR

DIGEST: An Army officer on temporary duty at Fort Eustis attending a course of instruction of less than 20 weeks and thus entitled to per diem allowances, continues to be on temporary duty and entitled to appropriate travel allowances after receipt of orders attempting to transfer him to Fort Eustis since purported permanent change of station orders contained the statement that member was awaiting assignment to another location upon completion of instruction at Fort Eustis and therefore did not effect a change in his TDY status.

This action is in response to a letter dated April 17, 1975, from the Finance and Accounting Officer, Headquarters, United States Army Aviation School, Fort Rucker, Alabama, requesting an advance decision as to the propriety of making payment on a voucher in the amount of \$1,008.48, to Second Lieutenant , for per diem and transportation allowances in connection with his ordered change of station assignment. The request was assigned Control No. and forwarded to this Office by Per Diem, Travel and Transportation Allowance Committee endorsement, dated July 9, 1975.

The file shows that by Letter Orders AR-08-158, dated August 26, 1974, issued by Headquarters, First Reserve Officers Training Corps Region, Fort Bragg, North Carolina, the member was ordered to active duty for 2 years, assigning him on permanent change of station (PCS) to the 21st Replacement Detachment, Fort Hood, Texas, with temporary duty (TDY) en route at the U.S. Army Transportation School, Fort Eustis, Virginia, for a period of approximately 12 weeks to attend Transportation Officer Basic Course Number 8-55-C20, with a reporting date of September 20, 1974.

A statement dated September 26, 1974, by the Billeting Officer, Fort Eustis, certified that Government quarters and

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Government mess were not available to the member for the period September 19 through December 18, 1974.

While attending the Transportation Officer Basic Course at Fort Eustis, the member received Special Orders Number 214, dated November 4, 1974, issued by the United States Army Transportation Center and Fort Eustis, purportedly reassigning him on PCS from Fort Hood, Texas, to the Transportation School Brigade, Fort Eustis, with a reporting date of not later than January 3, 1975. Special instructions contained in the order stated:

"(c) Officer pending flight instructions for assignment to US Army Aviation School, Fort Rucker, Alabama 36360."

By Special Orders Number 239, dated December 10, 1974, issued by United States Army Transportation Center and Fort Eustis, the member was transferred on PCS assignment from the Transportation School Brigade, Fort Eustis, to United States Army Aviation School, Fort Rucker, Alabama, with a reporting date of not later than February 9, 1975. Special instructions contained in the order stated:

"(b) Individuals to attend Officer Rotary Wing Aviation Course, Class 75-34 starting 9 Feb 75 closing 21 Oct 75. Officers to be utilized by the USATSCH Commandant at Fort Eustis, VA 23604."

It appears that Lieutenant was paid per diem for the period September 19 through December 12, 1974. However on the basis of his PCS orders dated November 4, 1974, which purported to make Fort Eustis his permanent station, per diem payment in the amount of \$876.48 for the period after the date of his PCS orders was collected from him.

Lieutenant in reclaiming the per diem collected from him stated that he was in a TDY status while at Fort Eustis and never was in a PCS status there. Thus, it is his contention that he was entitled to per diem for the period November 4 through December 18, 1974; however, for the period December 19, 1974, through February 2, 1975, during which he remained at

Fort Eustis, Lieutenant is not claiming per diem since the delay during that period was for his own convenience.

Section 404 of title 37, U.S. Code (1970), provides for payment of travel and transportation allowances when a member of a uniformed service is away from his permanent station.

Paragraph M4209, Volume 1, Joint Travel Regulations (1 JTR), entitled "Temporary Duty Station Changed to Permanent Station" provides in pertinent part:

"A member who receives permanent change-of-station orders at a temporary duty station * * * which designate his temporary duty station as his new permanent station effective (1) immediately, (2) during the continuation of the temporary duty period, or (3) upon completion of temporary duty will not be entitled to per diem at that station beginning on the date of receipt of such permanent change-of-station orders, nor to allowances for travel to the old permanent station unless the permanent change-of-station orders specifically direct his return thereto on official business. * * *"

If the orders of November 4, 1974, in fact made Fort Eustis Lieutenant 's permanent duty station, then in accordance with the above regulation no per diem would be due him after November 4, 1974.

The term "temporary duty" is defined in Appendix J, 1 JTR, as duty at one or more locations, other than the permanent station, at which a member performs temporary duty under orders which provide for further assignment, or pending further assignment, to a new permanent station or for return to the old permanent station upon completion of the temporary duty.

The term "permanent change of station" is defined in Appendix J, 1 JTR, as the assignment, detail, or transfer of a member to a different duty station under competent orders which neither specify the duty as temporary, nor provide for further assignment to a new station, or direct return to the old duty station.

Whether an assignment to a particular station is temporary or permanent is a question of fact to be determined from the orders under which the assignment is made, and from the character of the assignment, particularly as to the duration and nature of the duty. 24 Comp. Gen. 667, 670 (1945). While an administrative evaluation of the character of the assignment, as reflected in the orders directing its performance, ordinarily is given considerable weight in such a determination, it is not conclusive in the matter when other available evidence is considered sufficient to indicate the existence of a contrary factual situation. Decisions B-139112, May 27, 1959, and B-174376, December 28, 1971.

The record shows that Lieutenant 's initial assignment to Fort Eustis was TDY; i.e., for a course of instruction lasting less than 20 weeks. The orders of November 4, 1974, while stating that assignment to Fort Eustis was to be a PCS for Lieutenant , by the special instruction to that order clearly indicated that Fort Eustis was in fact not to be his permanent station, but was to continue as a TDY assignment, since he was pending assignment to Fort Rucker. The fact that Fort Eustis was not to be his permanent station is further borne out by the orders of December 10, 1974, which were issued before the termination of the course of instruction at Fort Eustis, assigning Lieutenant to Fort Rucker on a PCS.

We, therefore, are of the opinion that the orders of November 4, 1974, did not in fact effect a permanent change of station for Lieutenant and Fort Eustis is to be considered his TDY station until the termination of the course of instruction he was then attending and Lieutenant is entitled to appropriate travel allowances during that period. Accordingly, if otherwise correct, payment may be made on the voucher submitted.

R.F. KELLER

[Deputy] Comptroller General
of the United States