

DECISION



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

FILE: B-186128

DATE: JUL 9 1976

MATTER OF: Lieutenant Commander
SC, USN

- DIGEST:
1. The per diem entitlement of a service member who made stopover at the port of debarkation in the United States incident to a change of permanent station from Rota, Spain, to Washington, D.C., is to be determined on the basis of whether the member acted in a reasonable manner. Where the member, due to lateness of hour, unavailability of continuation airplane flights until the following day and impracticality of travel by private vehicle, decided to delay his onward travel until the next day, such action meets the test of reasonableness.
 2. Per diem may be authorized for the day of debarkation when no further travel is performed, but commercial transportation would have been available for the member to continue travel from his port of debarkation to his next permanent station only if the member's delay or stopover meets the test of reasonableness.
 3. A member is not entitled to per diem for the day of debarkation when the port of debarkation is the permanent duty station and the member takes leave away from or at the port of debarkation.

This action is in response to a letter dated December 30, 1975, with enclosures, from Chief Warrant Officer G. F. Welch, SC, USN, Disbursing Officer, Navy Regional Finance Center, Washington, D.C., requesting an advance decision as to the propriety of making payment to Lieutenant Commander _____, SC, USN, _____, for

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per diem during a stopover incident to travel on a permanent change of station (PCS) transfer from Rota, Spain, to Washington, D.C. That request was forwarded to this Office by the Per Diem, Travel and Transportation Allowance Committee and assigned PDTATAC Control No. 76-7.

The record shows that by Bureau of Naval Personnel Order No. 138684, dated August 22, 1975, the member was ordered to make a PCS transfer from the U.S. Naval Station, Rota, Spain, to the Naval Supply Systems Command Headquarters, Washington, D.C. Pursuant to these orders, the member and his dependents departed from Rota, Spain, at 6:00 p.m., on September 2, 1975, by Government airplane and traveled to Torrejon Air Force Base, Madrid, Spain, arriving at 9:00 p.m., the same day. The member and his dependents departed Madrid, Spain, by Government airplane at 6:00 p.m., September 3, 1975, and arrived in Philadelphia, Pennsylvania, at 8:30 p.m., the same day, September 3, 1975.

The member states that he did not receive his baggage and clear customs until 10:30 p.m. Further, he had originally intended to depart Philadelphia for Washington, D.C., by commercial airline, but was informed that no flights were available until the next morning, September 4, 1975. By this time, the member and his family had been either in a standby or actual flying status for 13-1/2 hours. Due to this and unavailability of commercial air until the following morning, they obtained lodging and remained in Philadelphia overnight. On the following morning, the member ascertained that his privately owned vehicle (POV), which had been shipped from Spain was available. As a result, instead of taking a commercial flight, he obtained the vehicle from the shipping agent and he and his dependents traveled from Philadelphia to Washington by POV on the morning of September 4, 1975, departing at 8:00 a.m., and arriving in Washington, D.C., at approximately 10:30 a.m.

Section 404^{1/2} of title 37, United States Code (1970), provides in part that under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed under orders, away from his permanent duty station. Paragraph M4204-3a^{1/2} of Volume 1, Joint Travel Regulations (1 JER), in effect during the period in question, provides in part:

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"* * * a member will not normally be expected to select a schedule which will require departure between the hours of 2400 and 0600 or arrival between the hours of 2400 and 0600. In selecting schedules, due consideration should be given to duty requirements; duty hours; availability of lodgings at points of origin, destination, or way points; onward transportation; and the personal comfort and well-being of the traveler. Rest stops at way points where there is a change in carrier or mode of transportation may be permitted provided the period of travel already performed is substantial and the exigencies of the Service permit."

Paragraph M4208 of the JTR's provides:

"For the day of arrival at or departure from a port of embarkation or debarkation in the United States in connection with travel to or from an overseas station, no per diem will be payable if mileage is payable for travel performed on that day. If mileage is not payable on that day, the per diem allowance applicable to the member at 2400 on that day will be payable for that day * * *."

In our decision 51 Comp. Gen. 364 (1971), we considered the application of an analogous provision in Volume II, Joint Travel Regulations (paragraph C1051-2), relating to civilian employees of the Department of Defense. We stated therein that we interpreted the regulation as intending only to furnish guidelines for use in determining whether in a particular situation the traveler acted in a reasonable manner. In decision B-177897, March 21, 1973, we extended this interpretation to members of the uniformed services, stating as follows:

"Similarly, as to military members, each particular situation should be considered as to whether the traveler in remaining overnight before continuing his travel is acting in a reasonable and prudent manner having regard to the duty performed, the available travel and the need to be at his permanent station at a particular time."

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Therefore, in these circumstances and since there was no showing of an urgent requirement for the member's reporting to his new station at an earlier time, it is our view that it was not unreasonable for the member to remain in Philadelphia overnight. Accordingly, payment of per diem for September 3, 1975, is authorized in the member's case, if otherwise correct.

In addition to the foregoing voucher question, the submission, by third endorsement, presented two additional questions, namely:

(1) whether per diem is authorized for the day of debarkation when no further travel is performed, but commercial transportation would have been available for the member to continue travel from the port of debarkation to his next permanent duty station; and

(2) whether per diem is authorized when the port of debarkation is the permanent duty station and the member takes leave away from or at the port of debarkation.

As to the first question, the rule of reasonableness as set forth in decision B-177897, ^{supra}, and as restated in 55 Comp. Gen. 513 (1975), should be applied. Thus, even if commercial transportation for further travel is available, whether or not it was reasonable for the member to remain at the port of debarkation overnight would depend on, but not limited to, the following factors: (1) the time of his arrival; (2) the length of time already in a travel status that day; (3) the hour of expected arrival at the end of the trip should he travel on; (4) what type of accommodations may be available at final destination and, (5) the age and number of dependents.

As to the second question, whether the member would be entitled to per diem would depend upon his status at 2400 on the day of debarkation as set forth in paragraph M4208 of 1 JTR. If he is in a leave status at that time, he is not entitled to per diem. See 30 Comp. Gen. 226 (1950); and B-185459, April 22, 1976. Also, one is not entitled to be paid per diem while at his permanent duty station. Paragraph M3050 of 1 JTR provides that a member must be in a travel status away from his permanent duty station, upon

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public business, pursuant to competent travel orders. Thus, it is our view that a member in a status as set forth in the second question would not be entitled to per diem.

Paul G. Dembling

For the Comptroller General
of the United States