

DECISION

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

FILE: B-187298

DATE: MAR 21 1977

MATTER OF: Major [REDACTED] USAF

- DIGEST: (1) When military personnel are assigned to temporary duty, and in fact complete the assignment, they are under an obligation to return to their permanent duty station as soon as practicable or bear the burden of the additional expenses incurred and be charged leave in connection with the delay.
- (2) When there is a disagreement as to the facts of a situation, the burden is upon the claimant to supply legally sufficient evidence to overcome the presumption of correctness granted to the administratively reported facts.
- (3) Air Force officer may be allowed an additional day of travel time with per diem and without charge to leave in computing constructive travel time since he was given routing instructions which would require additional day and, otherwise, he would have been required to be on duty for 18 hours without rest. However, no per diem may be allowed for one other day he spent in travel in excess of constructive travel time, and charge to leave for that day appears proper.

This action is in response to a letter dated July 21, 1976, from Major [REDACTED], USAF, [REDACTED], appealing our Claims Division's June 2, 1976 settlement disallowing his claim for recrediting of the leave charged and additional per diem and

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reimbursable expenses incurred incident to temporary duty travel he performed during the period of January 20 through 27, 1975.

By special order dated January 14, 1975, Major [REDACTED] was directed to perform temporary duty travel from Seymour Johnson Air Force Base (AFB), North Carolina, to Jever Air Base (AB), Germany, and return. Major [REDACTED] mission, along with 3 other crewmembers, was to ferry military aircraft to Jever AB. Major [REDACTED] orders directed him to travel by military air when available, authorized him "essential priority" for travel aboard Military Airlift Command (MAC) aircraft and authorized commercial travel. The orders also authorized 6 days' leave. Accompanying the orders, was a checklist which required the ferry crew commander, upon arrival at Jever AB, to contact the Military Assistance Advisory Group (MAAG), Bonn, Germany, by telephone to advise them of the crew's return requirements. The checklist stated that MAAG would then make reservations on a German Air Force aircraft or commercial aircraft and contact the commander, advising him of the mode of transportation and reservation information.

Major [REDACTED] departed from Seymour Johnson AFB on January 20 and, after a stop in Spain, arrived at Jever AB on January 23. He states that upon arrival he contacted MAAG, and was given approval to proceed to Bonn to confirm further travel plans. On January 23 the travel to Bonn commenced and on the 24th, Major [REDACTED] reported to MAAG.

In a memorandum, dated February 6, 1975, MAAG reported that Major [REDACTED] and the other crewmembers arrived in Bonn on the 24th and requested transportation requests (TR's) for return to the United States. They were advised that they would have to obtain the TR's at Rhein-Main AB after they first attempted to return via MAC as stated on their orders. The memorandum states that 3 of the aircrew members indicated that they desired to take a few days' leave and return to the United States on January 27th or 28th. Because members on leave status lose all priority on MAC flights, MAAG advised the use of a German Air Force (GAF) flight since a reservation on the 27th could be confirmed. The memorandum continued that Major [REDACTED] wanted to return as soon as possible but, when he realized he would have to go through Rhein-Main then via McGuire or Charleston, and would

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only lose 1 day using the GAF flight, he opted to use the GAF flight also. He remained in Germany until January 27 when he departed on the GAF flight, and arrived at Seymour Johnson AFB that same day.

The member was paid per diem (\$78.80), monetary allowance in lieu of transportation (\$21.21), and reimbursable expenses (\$5.75) by the Air Force. Such payments were based on the Accounting and Finance Officer's computation of constructive travel in Germany and returning to the United States, as if the member had awaited instructions from MAAG at Jever AB and returned to the United States via commercial air carrier from Frankfurt, Germany, on January 24, 1975. He was charged leave for January 25 and 26, 1975, on the basis that he could have returned to the United States on January 24, 1975.

Major [REDACTED] claim for additional per diem and reimbursable expenses incurred in connection with his travel from Jever AB to Bonn and delay in Bonn awaiting the GAF flight, and recrediting of the leave charged him, was transmitted by the Air Force Accounting and Finance Center to our Claims Division with a recommendation that the claim be disallowed. The Claims Division disallowed the claim primarily on the basis that there was no evidence indicating that MAAG directed the member to report to Bonn, and therefore, it appears that he traveled there on his own initiative. It was indicated that the record shows he could have traveled from Jever AB to Rhein-Main AB on January 23, and returned to the United States by commercial air on January 24, had he awaited instructions at Jever AB from MAAG, as the checklist directed. Therefore, the Air Force computation of his travel allowances on the constructive travel basis was found proper.

In his appeal letter Major [REDACTED] states that in his initial contact with MAAG, approval was given for the group to proceed to Bonn to confirm further travel plans. He indicates that at Bonn MAAG gave him the choice of either proceeding to Rhein-Main AB or awaiting the GAF flight, with the GAF flight being recommended as a better confirmed method of return. He also claims additional reimbursable expenses indicating that the routing and schedule from Jever AB to Bonn or Frankfurt (Rhein-Main AB) was the same except for an additional leg from Bonn to Frankfurt. He indicates that he would have incurred an additional transportation expense

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from Frankfurt to Rhein-Main AB plus overnight billeting there. He also indicates that the constructive computation does not take into consideration the cost of travel from McGuire AFB, New Jersey, to Washington, D.C., that he believes would have been incurred. He states that if he had traveled to Rhein-Main AB on January 23, by the time he arrived over 18 hours would have elapsed since his "duty day" began.

Major [REDACTED] travel and transportation allowances in this case are computed under applicable provisions of Volume 1 of the Joint Travel Regulations (1 JTR), promulgated under 37 U.S.C. 404 and 405 (1970).

Paragraph M4250-11, 1 JTR, provides that no per diem allowance is payable for any period in excess of the time necessary to perform travel by the mode of transportation employed or for constructive travel by common carrier over a usually traveled route, whichever is lesser. See also 1 JTR, paragraph M4204-1, and B-177493, May 14, 1973. Also, leave is to be charged for delay at a temporary duty station, after the ordered duty is complete and the member is free to depart, unless excused by appropriate authority as unavoidable. Air Force Manual 177-373, Volume III, July 1, 1971, paragraph 11-3d.

Our Office must necessarily rely on the written record in the settlement of claims. The questions presented herein are questions of fact. When there is disagreement between the parties supplying the facts, in the absence of evidence submitted by the claimant legally sufficient to overcome the presumption of their correctness, we must accept the facts administratively reported as controlling the disposition of the claim. See B-165467, October 30, 1968, and the authorities used therein.

The record fails to disclose evidence indicating that on January 23 MAAG directed Major [REDACTED] to report to Bonn to receive instructions on the mode of travel to be used for return. Instead, it appears that had Major [REDACTED] remained at Jever AB for instructions, as stated in the checklist, return transportation could have been provided from Frankfurt (Rhein-Main AB). Thus, the Accounting and Finance Officer's conclusion that the travel to Bonn must be viewed as performed as a matter of personal choice, appears correct. However, we note that item 9B of the checklist

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provides that if return to the United States is to be by commercial airline, the crew is to remain overnight at Jever AB, travel to Frankfurt the next day, remain overnight in Frankfurt, and leave by commercial airline the next day. Following that schedule, Major [REDACTED] would be entitled to 1 additional day of travel time and per diem, and 1 less day charged to leave. That appears to be a reasonable schedule which would have avoided the 18-hour "duty day" the other schedule would have required. Compare 55 Comp. Gen. 513 (1975). Therefore, he may be paid per diem for January 25, 1975, and it would appear proper to remove the charge to his leave for that day.

As to Major [REDACTED] contention that the constructive travel does not take into consideration the additional travel expense from McGuire AFB to Washington, D.C., which would have occurred had the constructive route been used, it does not appear that such routing would necessarily have been used on the constructive travel. Accordingly, reimbursement appears to have been properly computed in accordance with the regulations.

Major [REDACTED] also is claiming miscellaneous expenses incurred incident to temporary duty. He was paid pursuant to paragraphs M4400-2 and 3 1 JTR, mileage or monetary allowance in lieu of transportation (\$21.21) for travel between Jever AB and Rhein-Main AB (port of embarkation), and miscellaneous reimbursable expenses (\$5.75), for constructive travel purposes. His claim includes additional expenses incurred incident to his travel to Bonn and his subsequent delay, viewed above as personal, i.e., outside the authorized route for return to the United States. Thus, he is due no additional amounts for these expenses.

Accordingly, the settlement of the Claims Division is sustained, except as to the per diem allowed for January 25, 1975, a settlement for which will be made for the amount found due.

E. F. KELLER

Comptroller General
of the United States