

13917 PLM-2

**DECISION**



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

**FILE:** B-196258

**DATE:** June 6, 1980

**MATTER OF:** John J. McMahon, Jr.

- DIGEST:**
1. Civilian employee of military stationed in Tehran, Iran, may not receive temporary living allowance while residing in hotel room furnished at Government expense. He did not incur any lodging costs and temporary lodging allowance provided for at Section 121 of Standardized Regulations does not cover costs of meals and food.
  2. Civilian employee of military stationed in Tehran, Iran, is not entitled to reimbursement for all rental costs but to living quarters allowance as specified in Standardized Regulations. Entitlement is set on yearly basis by Department of State and employee receives 1/365th for each day in quarters for which he pays until he transfers. Where allowance was erroneously paid for 8 days after transfer because of confusion as to date of departure from Iran, overpayment is waived under 5 U.S.C. 5584.
  3. Civilian employee of military stationed in Tehran, Iran, is entitled to 10 percent post differential as specified in Standardized Regulations until date of departure from Iran. Where erroneous overpayments of differential for 8 days after employee transferred from Iran were due to confusion as to date of departure, overpayment is waived under 5 U.S.C. 5584.

Mr. John J. McMahon, Jr., appeals the settlement by the Claims Division wherein his claim of \$5,959 for ~~temporary lodging allowance (TLA)~~ and ~~living quarters allowance (LQA)~~ was partially disallowed. As will be explained, we affirm the action of the Claims Division with certain adjustments to the amounts allowed the claimant.

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Mr. McMahon was appointed to a civilian position with the Army in Tehran, Iran. He reported to duty on January 15, 1975, and was assigned quarters at the Evin Hotel in Tehran for which the Government bore the expense. The claimant remained at the Evin Hotel until May 19, 1975, when the Army ordered him to vacate the quarters. From May 20, to October 31, 1975, when he left Iran, Mr. McMahon resided in quarters for which he paid rent to a private individual.

Prior to his departure for Iran, Mr. McMahon received a \$2,500 travel advance. Upon completion of his tour of duty in Iran, the Army notified Mr. McMahon that he had an outstanding balance of \$2,426.62 from the travel advance which he should return to the Government.

Because of the Army action, Mr. McMahon filed a claim with the Claims Division alleging that he was entitled to approximately \$5,959 less the outstanding travel advance of \$2,426.62. The basis of Mr. McMahon's claim was that he was entitled to a TLA of \$17 per day for food and miscellaneous items while at the Evin Hotel from January 15, to May 20, 1975, and that he was entitled to a housing allowance for the remaining time he was in Iran from May 20, to October 31, 1975.

After receiving an administrative report from the Army, our Claims Division issued a Settlement Certificate denying Mr. McMahon's request for TLA from January 15, to May 19, 1975, but allowing his claim for a housing allowance which was correctly referred to in a settlement as a living quarters allowance.

The claim for TLA was denied because under the Department of State Standardized Regulations (Government Civilians, Foreign Areas) (hereinafter Standardized Regulations) Sections 121 and 122, an employee receives TLA to cover the costs of temporary accommodation in a hotel "including lodging, heat, light, fuel, water, and obligatory service charges", but food costs are expressly excluded. Since Mr. McMahon's hotel accommodations were paid for by the Government, we affirm this action by our Claims Division.

We note that Mr. McMahon has supplied us with a copy of a document, "Welcome To Iran" prepared by the Army which indicates that certain individuals residing in the Evin Hotel at no expense

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will be entitled to 50 percent of the normal TLA rate under the provisions of 1 Joint Travel Regulations (1 JTR), para. M4303. While it appears that Mr. McMahon's claim for \$17 per day TLA is submitted in reliance on information contained in this publication, the referenced regulation is only applicable to military personnel. To the extent that 1 JTR para. M4303 provides for reimbursement for food and meal costs, there is no comparable allowance for civilian employees transferred to foreign areas.

Regarding LQA, the Claims Division allowed Mr. McMahon's claim for May 20, to August 20, 1975, under the provisions of Standardized Regulations, Section 132.12e, which, in his situation, provides for the grant of LQA to commence on the date he incurs expenses for quarters. Based on Mr. McMahon's monthly rental cost of \$550, he was allowed \$1,650. The Claims Division disallowed payments of LQA for the period of August 21, to October 31, 1975, based on information from the Army indicating that Mr. McMahon had already received an allowance for this period. The Army was requested to verify that Mr. McMahon in fact received this allowance as well as any other allowances due him.

The record contains a copy of the Army's letter to Mr. McMahon informing him that he received LQA from August 21, 1975, until he departed Iran and a 10 percent cost-of-living allowance (more specifically a 10 percent post differential) from its date of applicability to him, August 31, 1975, until he departed Iran. The letter correctly indicates these were the only allowances due him. Mr. McMahon nevertheless contends that he received none of these allowances and in support of this he has submitted copies of leave and earnings statements covering the period he was in Iran.

We have reviewed the record before us and have contacted the Army to verify that Mr. McMahon received all LQA and post differential payments due him. We were informed that Mr. McMahon received payment of \$1,511.96 for allowances in his paycheck for the pay period ending November 8, 1975, and an additional \$329.01 for allowances on December 20, 1975. The leave and earnings statement furnished by Mr. McMahon for the pay period ending November 8, 1975, verifies the former payment of \$1,511.96, and we have informally verified the latter payment.

The initial payment consisted of \$999.99 for LQA and a post differential of \$511.97. The second payment of \$329.01 was for

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LQA. Thus, Mr. McMahon received LQA of \$1,329 from August 21, 1975, until he departed Iran and a cost-of-living allowance of \$511.97 from August 31, 1975, until he departed Iran.

The Army explained its payment of the \$1,329 for LQA as follows. From August 21, to August 30, 1975, the claimant was authorized LQA at \$5,100 per year or \$13.97 per day. This was the maximum for an individual in GS-13 status without dependents in Iran as was Mr. McMahon. See Standardized Regulations, Section 920 ("Post Classification and Payment Tables") (August 3, 1975) and the explanatory material relative to LQA in Sections 130-137. From August 31, to November 8, 1975, the claimant was authorized LQA at \$6,200 per year or \$16.99 per day. See Standardized Regulations, Section 920 (August 31, 1975, September 28, 1975, October 26, 1975). Thus, Mr. McMahon was paid for 10 days at \$13.97 per day and 70 days at \$16.99 per day which equals \$1,329.

The Army's rate of payment was correct and, indeed, \$1,329 is the amount to which Mr. McMahon would have been entitled had he remained in Iran until November 8, 1975; however, he departed Iran on October 31, 1975, and his LQA should have ceased then. See Standardized Regulations, Section 132.41b. Therefore, Mr. McMahon received \$16.99 for 8 days on which he had no entitlement and was overpaid \$135.92.

Also, in verifying Mr. McMahon's LQA entitlement for the period past August 20, 1975, we discerned that the Claims Division's Settlement Certificate for LQA was erroneous. The Claims Division authorized Mr. McMahon \$1,650 (\$550 a month for 3 months) from May 20, to August 20, 1975. Mr. McMahon's correct entitlement was \$5,100 a year or \$13.97 a day. See Standardized Regulations, Section 920 (May 4, 1975, June 1, 1975, June 29, 1975). Thus, since this time period encompasses 93 days, Mr. McMahon was only entitled to \$1,299.21 (93 times \$13.97) and not \$1,650.

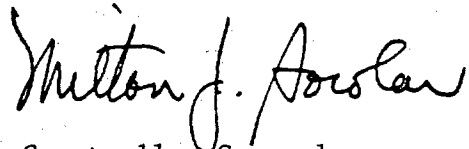
Regarding the Army's contention that effective August 31, 1975, Mr. McMahon was entitled to a 10 percent post differential until he left Iran, this is verified by the Standardized Regulations, Section 920 - Column 7 (August 31, 1975, September 28, 1975, October 26, 1975), and the explanatory material relative to this allowance in Chapter 500. Mr. McMahon received \$511.97 based on 10 percent of his salary from August 31, to November 8, 1975.

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Again Mr. McMahon was overpaid, as this allowance should have ceased on October 31, 1975, when he departed Iran. Standardized Regulations, Section 532a (September 3, 1972). From August 31, to October 31, 1975, Mr. McMahon earned, as a base salary, \$4,532.46 and he was entitled to post differential of \$453.25. Thus, he was overpaid \$58.72.

The Army's overpayments to Mr. McMahon of LQA of \$135.92 and post differential of \$58.72, appear to have been caused in part by confusion as to when he left Iran. Because there is no indication of fraud, misrepresentation, fault or lack of good faith, on Mr. McMahon's part with respect to these overpayments, we deem the circumstances of this case to warrant waiver under 5 U.S.C. § 5584 (1976). Accordingly, these amounts may be retained by Mr. McMahon.

Regarding Mr. McMahon's outstanding travel advance of \$2,426.62, it should be reduced by his entitlement to LQA of \$1,299.21. Mr. McMahon's net indebtedness to the Government in the amount of \$1,127.41 is being reported to the Army for collection.



For the Comptroller General  
of the United States