15853

DECISION

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

FILE: B-198764 DATE: January 6, 1981

MATTER OF: John A. Whiteley

DIGEST: Air Force captain claims reimbursement for expenses incurred while accompanying ~~his~~ dependent wife for medical treatment. The claim is denied since permissive temporary duty with no travel expense or per diem was intentionally authorized by his superior, and travel orders may not be revised retroactively so as to increase or decrease the entitlement which vested at the point at which the travel was completed, unless such revision is necessary to bring the order into conformity with the superior's original intent.

By letter dated March 12, 1980, Major John Whiteley, USAF appeals the settlement issued by our Claims Division, which denied his claim for reimbursement of actual expenses incurred while accompanying his wife for medical treatment. It is well established that travel orders may not be revoked or modified retroactively so as to increase or decrease the rights or benefits which have been fixed under the applicable statutes and regulations, except when an error is apparent on the face of the order and all facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence in preparing the orders. Because Captain Whiteley has not demonstrated that his case fits into this excepted category, we concur with the settlement of the Claims Division.

On August 8, 1975, Major Whiteley requested approval of non-medical attendant and/or permissive TDY orders for a 10-day period during September 1975, so that he might accompany his pregnant wife from Woomera, Australia, to Adelaide, Australia, for medical treatment. In support of his application, Major Whiteley submitted a letter from his wife's attending physician, in which the physician indicated that since the latter stages of Mrs. Whiteley's pregnancy might prove complicated, he would

~~244068~~ 114120

"like her to be in Adelaide, with her husband, by the early part of September at the latest." On August 13, 1975, Major Whiteley's commanding officer approved 10 days of permissive TDY, and special orders were issued authorizing Captain Whiteley to proceed on 10 days permissive TDY as a non-medical attendant. The orders specifically provided that "travel by this order does not entitle traveler to expense of travel or per diem." (Paragraph M6453 of Volume I, Joint Travel Regulations, prohibits travel allowances when permissive orders are issued.) Captain Whiteley departed on TDY on September 2, 1975.

Mrs. Whiteley did not deliver her baby during the second week of September as anticipated, and Captain Whiteley requested an additional 10 days of permissive TDY in order to remain with his wife in Adelaide. The original travel order was amended to authorize the additional period on September 22, 1975. The amending order specified that "Allowable traveltime is computed on a constructive schedule and excess of either the traveltime or the number of days specified in the TDY order may be an unauthorized absence or be charged to leave." The baby was born on September 24, and Major Whiteley returned to his duty station the following day. He was charged for 4 days of involuntary leave since he had been away for a total of 24 days.

On July 26, 1976, Major Whiteley sent a travel claim review request to the servicing finance office at Peterson Air Force Base. He argued that per diem, rather than permissive TDY should have been authorized for the period which he spent attending his wife in Adelaide. Specifically, he claimed that the provisions of Joint Travel Regulations, Volume I, para. M6400, and not the provisions of Air Force Regulation 35-26, should have applied in his situation. Two months later, he was informed that only the original order issuing authority could amend the travel order in question to allow for travel per diem incident to the TDY.

On September 1, 1977, Major Whiteley requested the review and payment of travel per diem allowances as provided by JTR, Volume I, para. M6400 for a military member non-medical attendant, and the reinstatement of 4 days of involuntary leave. The Air Force disapproved the claim on January 10, 1978. He resubmitted the claim with additional documentation on March 19, 1978. It was again disapproved on September 14, 1978. On November 9, 1978, the claim was

submitted to this Office. Our Claims Division determined that the Air Force had correctly applied JTR, Volume I, para. M6400 in Captain Whiteley's case, and disallowed the claim.

He argues that his travel orders should have authorized per diem while on TDY, as provided for in JTR, Volume I, paras. M6400 and M6401, rather than permissive TDY, as provided for in AFR 35-26. Paragraph M6400 of 1 JTR (in effect of the time) provides that:

> "Travel of escorts or attendants under this Part will be authorized only when the order-issuing authority has determined that travel by the dependents is necessary and the dependents are incapable of traveling alone because of age, physical or mental incapacity, or other extraordinary circumstances which require that dependents be accompanied by an escort or attendant."

M6401 adds that:

> "Members of the Uniformed Services assigned to escort or attendant duty under this Part will be entitled to travel and transportation allowances prescribed by Chapter 4 while performing such travel and temporary duty."

Pertinent Air Force regulations provide substantially the same.

Air Force Regulation 35-26, para. 16 (March 25, 1974) provides that permissive leave may be requested for "traveltime and periods of duty for non-medical attendants accompanying their own dependent patients to medical facilities for treatment/evaluation." Permissive TDY will be authorized only when competent medical authorities have verified that such duty is both necessary and desirable. The regulation limits the initial period of permissive TDY to 10 days, but allows for an extension of duty where necessary.

Major Whiteley is of the view, on the basis of the medical documentation he has provided, that his accompaniment of his wife was necessary, and thus that the commanding officer's initial determination as to the appropriateness of permissive TDY was incorrect.

It is well established that legal rights and liabilities in regard to travel allowances vest as and when the travel is performed

under the traveler's orders and that such orders may not be revoked or modified retroactively so as to increase or decrease the rights and benefits which have been fixed under the applicable statutes or regulations. An exception may be made only when an error is apparent on the face of the order and all facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence in preparing the orders. 54 Comp. Gen. 638 (1975) and cases cited therein.

The record does not clearly demonstrate that the orders issued to Major Whiteley were erroneous, nor did they reflect other than the commanding officer's intent. On the contrary, the record demonstrates that the order issuing authority intended to authorize permissive temporary duty only, with no cost to the Government. Furthermore, on the basis of the record before us, it is our view that the orders issued to Major Whiteley were proper in the circumstances at the time of issuance.

Accordingly, we must sustain the action of our Claims Division and conclude that the claimant is not entitled to the amounts claimed in view of the facts and the regulation in effect at the time.

Milton J. Socolar

For the Comptroller General
of the United States