



FILE: B-203525

DATE: March 15, 1982

MATTER OF: Colonel

, USAR

DIGEST: Where a member of a Reserve component was ordered to active duty for a period of less than 20 weeks, and this period of duty was extended for a period of less than 20 weeks, the period on active duty totaling in excess of 20 weeks, and the record does not indicate that the extension was due to unforeseen circumstances, the member's claim for per diem cannot be paid from the date the member receives the extension order. B-188882, August 23, 1977.

Colonel , USAR, , is appealing a settlement of our Claims Group dated January 9, 1980, which denied his claim for travel and per diem allowances in the amount of \$3,386.12, for the period January 3, through April 17, 1978, while serving on active duty for training. He was also denied an allowance for travel performed to report to this duty.

We must sustain the settlement of the Claims Group for the following reasons.

Colonel served on continuous active duty at Fort Gillem, Georgia, from June 3, 1977, through December 13, 1977. The authority for this was in several orders which extended short periods of duty. During these periods of duty he resided at College Park, Georgia. His home of record was Houston, Texas. When applying for additional active duty on December 1, 1977, he showed his current address as College Park, Georgia, rather than his Houston, Texas address. As a result a disbursing officer questioned the payment of travel and per diem allowances for the period of active duty January 3, 1978, through April 17, 1978, which resulted from that application. The orders authorizing that duty were sent to the Georgia address and were issued on January 18, 1978, and confirmed verbal orders of the commanding officer of December 29, 1977. As a result collections were made from his pay for the travel, transportation, and per diem allowances paid to him for the period January 3, 1978, through April 17, 1978. Collection was also accomplished

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for the transportation allowance paid to him for his travel from Houston, Texas, to College Park, Georgia, on December 26 and 27, 1977, since this travel was in connection with the duty to commence on January 3, 1978, and was performed prior to the verbal orders of December 29, 1977, authorizing it.

Subsection 404(a)(4) of title 37, United States Code, provides in part that:

"(a) Under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed or to be performed under orders, without regard to the comparative costs of the various modes of transportation--

* * * * *

"(4) when away from home to perform duty, including duty by a member of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, in his status as a member of the National Guard, for which he is entitled to, or has waived, pay under this title."

Reservists generally perform only intermittent periods of active duty and thus do not have a permanent station from which to be ordered away from to perform temporary duty. The quoted provisions are viewed as authorizing the payment of per diem to reservists ordered from their homes for short periods (less than 20 weeks) of active duty at a station where a mess and quarters are not provided. The payment of per diem under this authority is made on the same basis as to an individual who has a permanent station and is ordered to another location to perform temporary duty.

Regulations promulgated pursuant to that authority are contained in chapter 6 of Volume 1 of the Joint Travel Regulations (1 JTR). Subparagraphs M6000-1-c(1), and (2) and (3) provide as follows:

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"c. Per Diem While at Duty Stations

"(1) Active Duty for Less Than 20 Weeks.

Except as provided in subpar. a(2) and (3), when the period of active duty contemplated by the orders at any location is for less than 20 weeks, per diem, travel, and transportation allowances, including miscellaneous reimbursable expenses, are payable at the rate and subject to the same provisions and deductions as are provided for temporary duty in Chapter 4, Parts A, E, F, and I, as applicable.

"(2) Additional Periods Beyond 20 Weeks.

When, during a period of active duty of less than 20 weeks, the period of active duty must be extended due to unforeseen circumstances by an additional period of less than 20 weeks, per diem, travel, and transportation allowances, and miscellaneous reimbursable expenses payable will be continued for the entire period. When the prospective extended period involved is for a period of 20 weeks or more, no per diem will be payable under this subparagraph commencing on the date of receipt by the member of the extension order.

"(3) Active Duty for 20 Weeks or More

"(a) General. When a member is called to active duty for 20 weeks or more, no per diem or actual expense allowances are payable at any location where the duty to be performed is for 20 weeks or more regardless of the availability of Government quarters and Government mess."

Thus, when a reservist is ordered to duty for more than 20 weeks, the location where he is ordered to perform the duty is his permanent station at which temporary duty allowances may not be paid. In this regard we have held that when more than one set of orders are issued for active duty and each set of orders is for less than a 20-week period, but the total period exceeds 20 weeks, the allowances authorized should not be paid. The only exception to this being when the extension of active duty is ordered because of unforeseen

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circumstances. See 48 Comp. Gen. 655 (1969); Matter of Connaughton, B-188882, August 23, 1977.

Colonel [redacted] was on active duty continuously from June 2, 1977, through December 13, 1977. This information is shown on his application for active duty dated December 1, 1977, in which he applies for active duty commencing January 3, 1978, through April 17, 1978, at the same location. He was assigned to active duty for that period on the basis that such duty was to be performed at his permanent duty station. This determination by the Army is reflected in the orders issued on January 18, 1978, and was the basis for their determination that he was not entitled to the travel allowances here in question.

Since Colonel [redacted] was in an extended period of active duty at Fort Gillem, Georgia, when he applied for a further tour of duty at that place, the determination of the Army that Fort Gillem was his permanent duty station will not be questioned predicated upon a short break in service. Further, the amendment to his travel orders almost 1 year later changing the residence address cannot be viewed as sufficient to alter the entitlements vested under the original order. See 54 Comp. Gen. 638 (1975) and cases cited therein.

Accordingly, Colonel [redacted] claim must be denied and a review of the matter should be made to determine whether the temporary duty travel pay entitlements he actually received after October 1, 1977, were paid in accordance with the cited regulations and this decision.

for *Milton J. Ascoler*
Comptroller General
of the United States