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DECISION



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

FILE: B-205455

DATE: September 23, 1982

MATTER OF: Staff Sergeant John Osterman, USA

SUMMARY: Army member who was prevented from using available Military Airlift Command aircraft on emergency leave because his authorizing orders were incorrectly issued may not be reimbursed the cost he paid for commercial travel. The enabling regulation created only an eligibility for military air transportation in kind and not an entitlement to reimbursement for air transportation in general. Therefore, there is no authority to allow the claim for the cost of a commercial carrier.

The question in this case is whether Staff Sergeant John Osterman, USA, may be reimbursed the cost of commercial aircraft travel he used for emergency leave when he was prevented by the Air Force from using available Military Airlift Command aircraft. Even though Sergeant Osterman had orders authorizing his travel on military aircraft, he was prevented from boarding because his orders were incorrectly issued. He may not be reimbursed the cost of the commercial aircraft since the nature of his eligibility to use military aircraft created no entitlement to any other form of reimbursement.

The Finance and Accounting Officer at Headquarters, United States Army Infantry Center, Fort Benning, Georgia, presented the question, which was assigned control number 82-2 by the Per Diem, Travel and Transportation Allowance Committee.

On August 16, 1981, Sergeant Osterman received notice that his father had died in Puerto Rico. That day his request for emergency leave was approved, he received orders authorizing travel on Military Airlift Command aircraft at Government expense, and he departed from his duty station, Fort Benning, Georgia, for Puerto Rico. When he arrived at Charleston Air Force Base, South Carolina, in order to board the military aircraft that was available to Puerto Rico, he was denied boarding because his name was omitted from the authorizing orders, even though he displayed an emergency leave form which did contain his name.

The Red Cross provided money for Sergeant Osterman to purchase a ticket on commercial aircraft to Puerto Rico from Charleston, and he departed the night of the 16th. Since Sergeant Osterman's orders were not corrected while he was on emergency leave, the

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Transportation Officer at Fort Buchanan, Puerto Rico, did not permit the use of military aircraft on the return trip. Instead, a cost-charge transportation request was issued which obtained for Sergeant Osterman a return ticket on commercial aircraft, but for which he is required to reimburse the Army. Sergeant Osterman's orders were corrected upon his return to Fort Benning to show that he was authorized to travel on Military Airlift Command aircraft, as originally intended. However, even though the Army's Finance and Accounting Officer at Fort Benning feels that Sergeant Osterman's travel voucher should be paid, he does not know whether there is authority to reimburse Sergeant Osterman for the cost of commercial aircraft.

We have held that when an error is apparent on the face of orders, or where all facts and circumstances clearly demonstrate that some provision, previously determined and definitely intended, had been omitted, the order can be later corrected to effect the original intent. Matter of Dunning, B-165851, April 28, 1976. Thus, there is nothing objectionable in this case to the correction of Sergeant Osterman's orders after the travel was completed.

However, the orders can be corrected to allow only what was originally intended as provided for in the enabling regulations. Paragraph 6-10, Army Regulation 630-5, May 15, 1979, authorizes members' travel on military-owned or military-controlled aircraft in certain circumstances for members on emergency leave. See also Department of Defense Regulation 4515.13-R, January 1980, paragraph 3-3b(3). However, those regulations do not create an entitlement to reimbursement for air transportation in general. Paragraph 6-10 only creates an eligibility for a seat on particular aircraft (Government-owned or controlled) that fly only between limited Military Airlift Command locations. The regulation specifically states that if a member travels on a commercial carrier, it is at the " * * * member's own expense." There is no statutory authority for the Government to reimburse a member for travel incident to leave of this type. See generally Joint Travel Regulations, Volume 1, paragraphs M3050, M6453 and M6454. While it is unfortunate that Sergeant Osterman was inadvertently denied the use of military transportation, the corrected orders merely created an eligibility for military air transportation in kind, and there is no authority to allow his claim for the cost of a commercial carrier. Compare Matter of Nishihira, B-188596, August 10, 1977;

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and Matter of Panama Canal Commission, B-205811, August 18, 1982.
Accordingly, his travel voucher, which may not be paid, will be
retained here.

Harry K. Linn Clune
for Comptroller General
of the United States