

# DECISION



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

26971

FILE: B-213293

DATE: December 7, 1983

MATTER OF: Major Peter D. Schofield, USA,  
and Major Michael T. Potter, USA

**DIGEST:** Because of imminent danger of a natural gas explosion, a military installation commander responsible for protection of personnel and facilities, ordered two Army officers and their families to vacate Government family housing. Claims for reimbursement of the reasonable costs of motel lodgings necessarily incurred as a result of that order may be paid from the installation's operation and maintenance funds, since those costs were directly related to the commander's orders and the proper administration of the installation.

A disbursing officer<sup>1</sup> requests an advance decision on the question of whether claims presented by two Army officers may be paid. The officers claim reimbursement for motel bills that were incurred by them when they were ordered to vacate Government family housing at Redstone Arsenal, Alabama, because of the danger of a natural gas explosion.

## ISSUE AND HOLDING

The issue is whether the two officers may be reimbursed for the costs of lodgings obtained in the vicinity of their permanent duty station when they were ordered to vacate Government housing under emergency conditions. We hold that reimbursement for the costs of commercial lodgings reasonably obtained by them in those circumstances may properly be made from base operation

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<sup>1</sup> John F. Wylie, Accounting Officer/Deputy Chief, Finance and Accounting Division, Comptroller, United States Missile Command, Redstone Arsenal, Alabama, questions the propriety of certifying two vouchers for payment in the amounts of \$49.68 and \$37.80 in favor of, respectively, Major Peter D. Schofield and Major Michael T. Potter. His request was forwarded here by the Office of the Comptroller of the Army in correspondence dated September 30, 1983.

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and maintenance funds. Precedent for the holding is 52 Comp. Gen. 69 (1972).

#### FACTS

Major Peter D. Schofield and Major Michael T. Potter were occupying Government quarters with their families at Redstone Arsenal on the evening of October 17, 1982, when a natural gas main broke adjacent to a sewer main, allowing gas to seep into the sewer connected to their units as well as 16 others. Upon the recommendation of the installation fire chief, the deputy commander, Redstone Arsenal Support Activity, ordered the military police to effect the evacuation of the 18 units. The advice he received at the time indicated that there was a high risk of explosion, with potentially fatal consequences to the occupants. The dangerous condition of the housing was not expected to be remedied until the following day. No substitute Government housing was available that evening and since the claimants were unable to relocate with friends, as the other families succeeded in doing, the deputy commander suggested that they obtain lodging in a motel. The commander of the support activity states that his deputy, when he issued the order, had the delegated authority to order the evacuation.

#### LAW

Congress regularly authorizes the appropriation of funds to be used for the operation and maintenance of the Armed Forces and their installations,<sup>2</sup> and service regulations prescribe many of the operation and maintenance responsibilities of installation commanders. For example, paragraph 3-3 of Army Regulation 210-50 lists, among the objectives of family housing management, the provision of utilities services, the protection of facilities, and prompt maintenance. Paragraph 4-10 of Army Regulation 210-10 provides that

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<sup>2</sup> See, e.g., section 301 of Public Law 97-252, approved September 8, 1982, 96 Stat. 723; and section 301 of Public Law 98-94, approved September 24, 1983, 97 Stat. 625.

installation commanders are responsible for safeguarding personnel and property within their command. Further, paragraph 34 of Army Pamphlet No. 385-1, "Safety, Unit Safety Management," provides that the commander's role in accident prevention is an inherent command responsibility; paragraph 33 provides that the responsibility requires vigorous efforts to prevent accidents endangering persons or property in all operations and activities.

We have held that reimbursement from operation and maintenance funds is proper for reasonable costs necessarily incurred by service members as a result of their compliance with competent military orders issued to protect personnel from unsanitary or unsafe housing conditions. The general principle established in 52 Comp. Gen. 69 (1972) is that where costs are necessarily incurred as a result of a base commander's exercise of authority in the management of an installation, they may be paid as incidents to the operation of the facility and charged to operation and maintenance funds. In 55 Comp. Gen. 932 (1976), two conditions were adopted for determining whether to authorize reimbursement: (1) the costs incurred must have been the direct result of compliance with an order issued by competent military authority,<sup>3</sup> and (2) the costs must have been mandatory to provide for the claimant's habitation.<sup>4</sup>

#### DISCUSSION

In 52 Comp. Gen. 69, the commander issued an order, based on Air Force regulations, placing a commercial trailer court off limits because of the danger of fire and explosion. A member who resided at the trailer court filed a claim for reimbursement of the costs of

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<sup>3</sup> Compare Matter of Huggins, B-194499, October 31, 1979; in the absence of an order, the expenses claimed are not considered as being incurred in the performance of Government business.

<sup>4</sup> The decision in 52 Comp. Gen. 69 was distinguished in that the expenses being claimed were personal and not a necessary result of the orders; therefore, payment from operation and maintenance funds was not authorized. See 55 Comp. Gen. at 935-936.

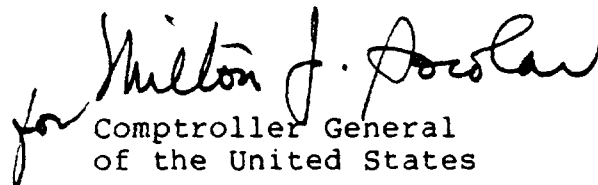
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removing his trailer. The regulation authorized the base commander to designate areas "off limits" when necessary to safeguard the health, morals and welfare of military personnel. Although the commander's designation prohibited personnel only from entering the area, we found that the practical effect of the order was to require the member to move his trailer, which resulted in the costs underlying his claim. There is a striking similarity between the facts in that case and those underlying the claims presented here.

Here there is no question about the authority of the officer who issued the evacuation order, and the object of his order was the prevention of possibly fatal consequences to the occupants of the 18 family housing units. The danger was imminent, and under Army regulations, the deputy commander of the installation's support activity not only had the authority for the action taken but the responsibility.

Moreover, the order required that the officers vacate their family housing, and in the absence of any substitute Government quarters or accommodations with friends, the order, in effect, required them to seek commercial lodgings. Therefore, rental of motel accommodations can properly be viewed as mandatory rather than as purely a matter of personal convenience. Our view is that the lodging expenses were reasonable in amount, and that the expenditures were directly related to activities necessary to the operation and maintenance of Redstone Arsenal.

Accordingly, we allow the two officers' claims in full.<sup>5</sup>

  
for Comptroller General  
of the United States

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<sup>5</sup> The vouchers are returned for further processing consistent with the conclusions reached in this decision.