The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Staff Sergeant Frank D. Carr, USMC--Transferred Service Member--Dislocation Allowance
File: B-226452

Date: June 21, 1988

DIGEST

1. The reimbursable relocation expenses of transferred service members should be charged as an obligation against the appropriation current when their permanent change-of-station orders are issued, and their rights to reimbursement vest when the change-of-station move is then performed under those orders. Payment of the reimbursable expenses should be made from the appropriation so obligated, rather than some other appropriation that may later be current when the travel is completed and the claim for reimbursement is processed.

2. Service members who commenced permanent change-of-station moves between October 1 and December 19, 1985, were entitled to a dislocation allowance at a rate equal to 2 months' basic allowance for quarters. Funds appropriated for the Department of Defense by fiscal year 1986 continuing resolution for that period remained available for payment of the dislocation allowance to those service members at that rate, even though the regular appropriation act of December 19, 1985, reduced the rate at which the allowance could be paid.

DECISION

The issue presented here is whether Staff Sergeant Frank D. Carr, United States Marine Corps, is entitled to payment of a dislocation allowance equal to 2 months of basic allowance for quarters (BAQ) on the basis of a permanent change of station he completed before December 19, 1985, even though his claim for reimbursement was partially processed after the enactment on that date of the Department of Defense (DOD) Appropriation Act, 1986, which provided that "(n)one of the funds appropriated by this Act shall be available to pay a dislocation allowance . . . in excess of

one month's basic allowance for quarters."1/ Since he commenced travel pursuant to his transfer orders prior to the enactment of the Appropriation Act, we conclude that Sergeant Carr is entitled to payment of the dislocation allowance for 2 months.

BACKGROUND

Sergeant Carr was transferred from Quantico, Virginia, to Okinawa, Japan, by permanent change-of-station (PCS) orders dated October 3, 1985. His dependents were not authorized to accompany him on this assignment. In conformity with these orders, he reported to his new duty station in Okinawa on November 11, 1985, after taking leave and arranging for the relocation of his dependents within the United States.

Section 407 of title 37, United States Code, authorizes payment of a dislocation allowance to a service member ordered to make a PCS move. Payment of the dislocation allowance was first authorized by the Career Incentive Act of 1955, and the allowance was designed to reimburse transferred service members for a wide range of miscellaneous relocation expenses, including those relating to lost rent deposits, the purchase of new automobile tags, and the rental of temporary lodgings.2/ The dislocation allowance was originally authorized in an amount equal to 1 month's BAQ, but 37 U.S.C. § 407 was amended on November 8, 1985, to raise the rate of the dislocation allowance to an amount equal to 2 months' BAQ, effective for moves begun after September 30, 1985.3/

1/ This action is in response to a request for an advance decision from the Disbursing Officer, 3d Force Service Support Group, Fleet Marine Force, Pacific, FPO San Francisco 96604-8800. The request was forwarded here, via the Marine Corps Finance Center and the Commandant of the Marine Corps, by the Per Diem, Travel and Transportation Allowance Committee after being assigned PDTATAC Control No. 87-1.

2/ Public Law 20, § 2(12), 84th Cong., Mar. 31, 1955, ch. 20, 69 Stat. 18, 21. See S. Rep. No. 125, 84th Cong., 1st Sess., reprinted in 1955 U.S. Code Cong. & Ad. News 1839, 1855.

3/ Public Law 99-145, § 611, Nov. 8, 1985, 99 Stat. 583.

Shortly thereafter, however, the increased allowance was eliminated. Section 8079 of the DOD Appropriation Act, 1986, imposed this limitation on payment of the allowance:

> "Sec. 8079. None of the funds appropriated by this Act shall be available to pay a dislocation allowance pursuant to section 407 of title 37, United States Code, in excess of one month's basic allowance for quarters."

Although fiscal year 1986 began on October 1, 1985, the DOD Appropriation Act, 1986, was not enacted until December 19, 1985.4/ Nevertheless, concerning section 8079 of that Act, quoted above, the Assistant Secretary of Defense for Force Management and Personnel stated in a memorandum dated January 24, 1986, that "once funds are appropriated, all general provisions of the Appropriation Act must be followed in utilizing those funds." The memorandum further stated the opinion that consequently on or after December 19, the dislocation allowance at the higher rate "cannot be paid even if the member qualified for the increased rate prior to that date."

After Sergeant Carr arrived in Okinawa in November 1985, he was paid a dislocation allowance equal to 1 month of his BAQ rate, but delays occurred beyond December 18, 1985, in processing the balance of his claim for relocation expenses. In accordance with section 8079 and the Assistant Secretary of Defense's memorandum, his claim for the second month was denied.

Sergeant Carr has submitted a supplemental claim voucher requesting payment of the dislocation allowance for the second month, and the responsible Disbursing Officer asks whether, in the circumstances, the supplemental claim should be processed for payment.

ANALYSIS AND CONCLUSION

The established rule is that legal rights and liabilities in regard to per diem and other travel allowances vest when travel is performed under orders. Moreover, travel orders may not be canceled or modified retroactively to increase or decrease the rights which have become fixed under the applicable statutes and regulations unless there is an apparent error on the face of the orders or unless it is clearly demonstrated that a provision which was previously

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4/ See Public Law 99-190, Dec. 19, 1985, 99 Stat. 1185, 1215.

determined and definitely intended had been omitted through error or inadvertence in the preparation of the orders. Warrant Officer John W. Snapp, USMC, 63 Comp. Gen. 4, 8 (1983), and cases cited therein.

We have also held, consistent with the foregoing, that PCS orders may not be canceled after the travel and transportation activities necessary to complete the transfer have been accomplished unless the orders were materially in error when issued. Vernon E. Adler, B-204210, Apr. 5, 1982.

The PCS orders issued to Sergeant Carr on October 3, 1985, were not issued in error and constituted valid orders. He performed his travel under those orders beginning on October 16, 1985, and he reported for duty in Okinawa on November 11, 1985. Thus, under the rule cited above, his legal rights and liabilities in regard to travel allowances became fully vested at that time under the laws and regulations then in effect. Under Public Law 99-145, Nov. 8, 1985, discussed above, he became entitled to a dislocation allowance equal to 2 months' BAQ. He was, however, paid for only 1 month because the field officer had not yet received guidance on the increased dislocation allowance.

With the enactment of the DOD Appropriation Act, 1986, on December 19, 1985, the Department of Defense construed section 8079 thereof as an absolute bar to payment of the dislocation allowance at a rate of more than 1 month's BAQ even if the member qualified for the increased amount prior to that date.

We disagree. We believe that a member whose right to a travel allowance became vested prior to December 19, 1985, is entitled to be paid from the appropriation account established under the continuing resolution which provided appropriations for fiscal year 1986 for the period prior to enactment of the Appropriation Act itself.

In 62 Comp. Gen. 9 (1982), we reversed an earlier ruling5/ and held as follows:

> "After considering all relevant arguments, we now conclude that to the extent an annual appropriation act does not provide sufficient funding for an appropriation account to cover obligations validly incurred under the terms of a continuing resolution, the funds made available by the

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5/ Letter to Senator William Proxmire, B-152554, February 17, 1972.

resolution remain available to pay these obligations."

In reaching that conclusion, we relied on a provision of the applicable continuing resolution which stated in section 103:

> "Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any project or activity during the period for which funds or authority for such project or activity are available under this joint resolution." Public Law 97-92, § 103, 95 Stat. 1193 (1981).

We characterized that provision as providing "that funds appropriated by the continuing resolution are to remain available to liquidate obligations incurred within the availability period of the continuing resolution." 62 Comp. Gen. 9, at 11. Accordingly, we held that, to the extent the annual appropriation act does not provide sufficient funding to cover obligations validly incurred under a continuing resolution, the excess obligations should be charged to and paid from the appropriation account established under the continuing resolution. 62 Comp. Gen. 9, at 12.

Since the continuing resolutions providing funds for DOD for fiscal year 1986 contain the identical provision6/ contained in section 103 of the fiscal year 1982 resolution discussed in 62 Comp. Gen. 9, we reach the same conclusion with respect to the continued availability of funds provided by the 1986 continuing resolution to pay obligations validly incurred thereunder. We find no indication in the fiscal year 1986 appropriation act or its legislative history that Congress intended section 8079 to apply retroactively.

As to when obligations are considered to be incurred, we decided that issue in a 1984 decision requested by the Department of Transportation. We held that ". . . for all travel and transportation expenses of a transferred employee, an agency should record the obligation against the appropriation current when the employee is issued travel

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6/ See Public Law 99-103, § 103, Sept. 30, 1985, 99 Stat. 471, 472. See also Public Law 99-154, Nov. 14, 1985, 99 Stat. 813; Public Law 99-179, Dec. 13, 1985, 99 Stat. 1135; and Public Law 99-184, Dec. 17, 1985, 99 Stat. 1176.

orders."7/ We also recognized that the government is not required to reimburse expenses until the employee actually incurs them, but that did not change our conclusion that the obligation arises at the time of the issuance of the orders. 64 Comp. Gen. 45, at 47.

In the present case, therefore, it is our view that the dislocation allowance payable to Sergeant Carr became an obligation against the appropriation current when his PCS orders were issued on October 3, 1985, and that his entitlement to the allowance vested when he then began his move in compliance with those orders. This would necessarily have involved a charge to the appropriation account established under the continuing resolution providing funds for the DOD between October 1 and December 18, 1985. The laws then in effect did not prohibit payment of the dislocation allowance in any amount less than the full rate prescribed by 37 U.S.C. § 407, as amended, that is, an amount equal to 2 months' BAQ.

Furthermore, consistent with the provisions contained in the continuing resolution described above, our view is that to the extent the annual DOD Appropriation Act of December 19, 1985, did not provide funding at that higher rate, obligated funds nevertheless remained available under the continuing resolution to pay Sergeant Carr and other service members similarly situated who had established an entitlement to the dislocation allowance at that rate prior to December 19, 1985. Hence, our conclusion is that Sergeant Carr is entitled to payment of the dislocation allowance at that higher rate, even though his claim for payment was not processed by December 19, 1985.

Sergeant Carr's supplemental claim voucher, with supporting documentation, is returned to the Marine Corps Finance Center for further processing consistent with the conclusions reached here.

Milton J. Socolar

for Comptroller General
of the United States

7/ 64 Comp. Gen. 45, 48 (1984). See also 64 Comp. Gen. 901 (1985). Although these decisions relate to transferred civilian employees, our view is that the reasoning and the conclusions reached are applicable as well to the situation of transferred members of the uniformed services.