



The Comptroller General  
of the United States

Washington, D.C. 20548

**Decision**

Matter of: Colonel James C. Berry, USAR--Army Reservists--  
Travel Allowances  
File: B-227584  
Date: May 19, 1988

**DIGEST**

1. Entries concerning travel allowances in military orders are ineffective to the extent that they do not conform to the applicable statutes and regulations. Hence, an Army reservist called away from his home to perform active duty is entitled to payment of travel allowances as prescribed by regulation, notwithstanding an entry included by the Army Reserve Personnel Center in his active duty orders that travel at government expense was not authorized.

2. Inconsistent travel orders or authorizations for the same travel issued by different Army commands should be reconciled in the settlement of an Army reservist's claims. The orders issued by the proper order issuing authority should be amended to conform to the law and regulations, and subsequent settlement of the member's claims should be based on the amended orders. The other orders should be disregarded.

**DECISION**

Colonel James C. Berry, United States Army Reserve, requests reconsideration of our Claims Group's denial of his claim for travel allowances based on his call to active duty for a 4-day period in April 1986. We conclude that our Claims Group's action was based on erroneous information that he was a member of the Standby Reserve when in fact he was a member of the Ready Reserve. We further conclude that he is entitled to partial payment on his claim.

**BACKGROUND**

Colonel Berry is an Army reservist who resides in Raleigh, North Carolina. He is assigned as an Individual Mobilization Augmentee to an Army unit located at Aberdeen Proving Ground, Maryland. On April 21, 1986, he was called to active duty and traveled from North Carolina to Maryland for the purpose of attending a North Atlantic Treaty

Organization conference on a subject related to his Army Reserve assignment. He returned to his home in North Carolina on April 24, 1986, after the conference ended.

Colonel Berry attended this conference under two separate sets of orders issued by two separate Army organizational elements. The first set of orders was issued by the Army Reserve Personnel Center (ARPERCEN). Those orders called him to active duty for a 4-day period "for retirement points only," and they contained this entry: "No pay, allowances, or travel at Government expense authorized."

The second set of orders was issued through Colonel Berry's unit at Aberdeen Proving Ground, directing the performance of temporary duty and authorizing the payment of travel allowances, including per diem, for his attendance at the conference.

On April 28, 1986, Colonel Berry filed a voucher with the Headquarters, Army Armament, Munitions and Chemical Command, claiming travel allowances to cover the expenses he incurred in attending the conference. He submitted both sets of orders with the voucher. The accountable officer at that headquarters declined to approve the voucher and instead sent it to the Army Finance and Accounting Center because of the inconsistencies in the orders. The Army Finance and Accounting Center in turn forwarded Colonel Berry's claim here as a matter involving doubtful elements of law or fact.

Upon the subsequent inquiry of adjudicators of our Claims Group, officials of the Army Finance and Accounting Center advised that an entry in the orders issued by ARPERCEN, indicating that Colonel Berry was assigned to the "USAR Con Gp MD," signified that he was a member of the Standby Reserve. Our Claims Group then denied his claim on the basis that the applicable regulations precluded payment of travel allowances because of his status as a standby reservist.

In requesting reconsideration, Colonel Berry states that at the time he attended the conference he was a member of the Ready Reserve and not the Standby Reserve. He has submitted documentation which verifies this. In addition, he states that he acted in reliance on advice he received from ARPERCEN when he made arrangements to attend the conference. He explains that his unit commander at Aberdeen Proving Ground asked him to attend the conference, and he then contacted ARPERCEN to request that he be called to active duty for that purpose. He was then advised that there were no funds available in the ARPERCEN budget for such an assignment, but that ARPERCEN could issue him active duty

orders to attend the conference on a nonpay basis. If this were done, he was told, then his unit could arrange for the issuance of separate orders authorizing payment of travel allowances, including per diem, from its own budgeted funds. Thus, he would not receive military pay and allowances for attending the conference, but he could make his own arrangements with his unit for reimbursement of his out-of-pocket travel and subsistence expenses. Colonel Berry states that he agreed to this procedure, and that his unit then arranged for the issuance of a separate set of travel orders to him based on ARPERCEN's advice.

ARPERCEN officials have advised us that Colonel Berry's statement of the facts is accurate. They further indicate that they have adopted these procedures as a standard practice to deal with reservists' requests for active duty assignments that cannot be paid for from funds allocated to ARPERCEN's use. They surmise that Colonel Berry encountered difficulties in securing reimbursement of his travel expenses because he submitted both sets of orders with his claim voucher, rather than just the orders issued at Aberdeen Proving Ground which were designed to provide for his traveling expenses.

#### ANALYSIS AND CONCLUSION

Subsection 404(a), title 37 of the United States Code, provides that under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel away from home under orders in the performance of official duty.

Implementing regulations which were in effect in April 1986 are contained in Volume 1 of the Joint Travel Regulations (1 JTR). Paragraph M6002, 1 JTR, provides that members of the Standby Reserve of the Armed Forces who voluntarily perform active duty without pay are not entitled to travel and transportation allowances incident to such duty. Subparagraph M6000-2, 1 JTR, further provides that members of the Reserve components other than the Standby Reserve who perform active duty without pay will be entitled to the allowances there prescribed for their travel to and from their duty station, subject to the regulations of the service concerned. Subparagraph M6000-2 further provides that:

". . . Per diem and actual expense allowances are not payable to members of the reserve components on active duty without pay while at their duty stations."

The same provisions were carried forward and incorporated in subparagraphs U7150-B and -D, Volume 1 of the Joint Federal Travel Regulations, which are currently in effect and which superseded 1 JTR on January 1, 1987.

Supplemental regulations of the Department of the Army are contained in paragraphs 4-22 and 4-23, Army Regulation 37-106. Paragraph 4-23 precludes payment of travel allowances to members of the Standby Reserve who voluntarily perform active duty without pay. Paragraph 4-22 authorizes travel allowances for other Army Reserve members performing active duty without pay for their travel to and from the place of duty, and it also directs that, "No per diem allowances are payable for any period members are at their training duty stations." Paragraph 4-22 further provides that the travel allowances which are payable for the performance of active duty in those circumstances will be charged to "Operations and Maintenance, Army Reserve."

We have consistently held that officials vested with the responsibility for issuing travel orders to members of the uniformed services may not properly provide for payment of travel allowances in the orders through procedures or in amounts other than as prescribed by the governing provisions of statute and regulation. See, e.g., Ensigns Dallman and Brake, USNR, 64 Comp. Gen. 489, 491 (1985), and decisions there cited. Provisions of orders that do not conform to statute and regulation are ineffective. Warrant Officer John W. Snapp, USMC, 63 Comp. Gen. 4, 7 (1983). Such orders are to be modified retroactively, if necessary, to bring them into conformity with the applicable statutes and regulations. Lynn C. Willis, 59 Comp. Gen. 619, 621 (1980).

In the present matter, therefore, we are unable to approve the procedures adopted by ARPERCEN in calling Ready Reserve members to active duty in a nonpay status under orders specifying that they are not entitled to travel allowances, since the applicable regulations provide that those reservists are entitled to travel allowances. We also are unable to approve of the other procedures involved here of having those reservists attempt to negotiate the issuance of separate travel orders from their units. Their rights to travel allowances are not subject to negotiation, and their entitlements instead must be established under the applicable regulations.

Hence, in the case of Colonel Berry, we find that the orders issued by ARPERCEN were ineffective to the extent they stated that travel at government expense was not authorized, since he was a member of the Ready Reserve and was entitled

to travel allowances. Those orders should now be modified retroactively to bring them into conformity with the applicable regulations, and payment of travel allowances should be made to Colonel Berry in the amount prescribed by the regulations. In that respect, the other orders furnished to Colonel Berry by his unit should be disregarded and may not serve as a basis for the payment of per diem or other items not authorized by regulation.

The documentation forwarded by the Army Finance and Accounting Center is returned for further processing consistent with the conclusions reached here.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General  
of the United States