

DECISION



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

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FILE: B-185987

DATE: NOV 3 1976

MATTER OF: Captain Charles S. Blazek, USA

DIGEST: Temporary or permanent duty is a question of fact to be determined from the orders and, where necessary, from the character of the assignment--considering duration, nature of duty enjoined, etc. Thus, Army officer ordered as a member of a unit on temporary duty to another station while quarters at permanent station were being renovated was entitled to the per diem prescribed for unit temporary duty, not to exceed 180 days without headquarters prior approval and excluding periods of group travel, leave and field duty.

This action is in response to letter dated November 4, 1975, with enclosures, from Major D. L. Rivard, USA, Finance Officer, Headquarters, 3d Infantry Division, APO New York, requesting an advance decision concerning the propriety of paying a claim for temporary duty travel per diem in the case of Captain Charles S. Blazek, [REDACTED], USA. That request was assigned Control No. 76-5 and forwarded to this Office by endorsement dated February 24, 1976, from the Per Diem, Travel and Transportation Allowance Committee.

The submission indicates that the member was assigned for permanent duty to the 1st Battalion, 10th Field Artillery, United States Army, stationed at Schweinfurt, Germany. On December 27, 1974, the 1st Battalion, 10th Field Artillery, was relocated due to renovation of the battalion's billeting area to Wildflecken, Germany, a distance of 38 miles. The relocation was ordered by Letter Orders Number 12-2222, dated December 27, 1974. These orders were directed to the entire battalion and directed a temporary change of station and return to permanent station upon completion of mission. The orders specified no change in the battalion's mission. The period of the orders was 5 months, from December 27, 1974, through May 26, 1975. However, because the renovation of the battalion's billeting area was not completed on schedule, the temporary change of station was extended for an additional 3 months, to August 27, 1975. The extension was

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accomplished by Letter Orders Number 08-2301 dated August 26, 1975, but it does not appear that the extension was approved by the Secretary of the Army.

The member traveled from Schweinfurt to Wildflecken, and return, by Government vehicle, he was provided Government housing in Bachelor Officers Quarters (BOQ) at no charge and he received his meals in a Government mess at no charge.

The member has filed a claim for per diem for 243 days in the total amount of \$1,625.64 upon the basis that the temporary change of station directed by orders of December 27, 1974, and the extension orders of August 26, 1975, was an assignment to temporary duty entitling him to payment of per diem from December 27, 1974, to August 26, 1975.

Included with the submission is an indorsement dated November 26, 1975, for the Commander in Chief, Army, Europe, by the Assistant Adjutant General, indicating the view that under the orders as issued the members of the battalion were on temporary duty and entitled to the claimed per diem. However, the Finance Officer indicates that it is his view that the temporary change-of-station orders effected a change in the place of normal duty for the battalion from Schweinfurt to Wildflecken and hence per diem is not payable. As support for that view he cites our decision 38 Comp. Gen. 656/658 (1959) in which it was indicated that a member's permanent duty station is the place where the basic duty assignment is for performance and the place to which he must proceed or return upon completion of temporary duty assignments. The Finance Officer asks the following questions:

(a) Based upon the language contained in 38 Comp. Gen. 656⁺(1959), does Wildflecken, Germany, upon unit movement with no mission change, become "the place in which the basic duty assignment is for performance", precluding payment of temporary duty allowances?

(b) Does an order that conveys an implied temporary duty status, i.e. "return to permanent station upon completion of mission" serve to authorize the [per diem] allowance if travel is performed in compliance therewith?

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(c) If the answer to (a) is affirmative, would payment of permanent change of station allowances be authorized to those personnel not provided Government transportation or who are authorized travel by privately owned vehicle, assuming appropriate individual orders were issued?

The Finance Officer indicates that if per diem is deemed payable, unit records will be used to exclude periods of field training exercises and periods of ordinary leave.

Section 404 of title 37, United States Code (1970), expressly authorizes the payment of travel allowances to members of the uniformed services when in a travel status away from their designated post of duty regardless of the length of time away from such designated post of duty. Pursuant to the authority of 37 U.S.C. 404 and 405, paragraph M4250 of Volume 1 of the Joint Travel Regulations (1 JTR) provides that when a member of the uniformed services is assigned to temporary duty under competent orders outside the United States, he is entitled to a travel per diem, as prescribed in the JTR. Paragraph M3050, 1 JTR, provides that members are entitled to travel allowances (including per diem) when in a "travel status" and, it is stated that a member is deemed to be in a travel status while performing travel away from his permanent duty station, upon public business, pursuant to competent travel orders, including travel on temporary duty. Paragraph M3003-2a, 1 JTR (change 254, April 1, 1974), in effect in December 1974, defined "temporary duty" as:

"* * * duty at one or more locations, other than the permanent station, at which a member performs temporary duty under orders which provide for further assignment, or pending further assignment, to a new permanent station or for return to the old permanent station upon completion of the temporary duty."

Under 1 JTR, paragraph M4256-2 (change 262, December 1, 1974) and paragraph M4205-3e(1)(b) (change 254, April 1, 1974) per diem is authorized for officers and enlisted members for "temporary duty performed with his unit or detachment thereof, when that unit or detachment is ordered by name or number away from its permanent

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station and Government quarters are available without charge and a Government mess is available." The rates of per diem in such circumstances are prescribed as \$6.70 per day for officers and \$2 per day for enlisted members.

Whether an assignment to a particular station is temporary or permanent is a question of fact to be determined from the orders under which the assignment is made, and, where necessary, from the character of the assignment--particularly as to the duration thereof, nature of the duty enjoined, etc. See 53 Comp. Gen. 454 (1974); 38 Comp. Gen. 656 (1959); and 36 Comp. Gen. 757 (1957):

In our decision 36 Comp. Gen. 757, 758, supra, we held that:

"* * * By definition, the word 'temporary' is a term of limitation which indicates a period of short duration and transitory nature. It has been so used with reference to temporary duty assignments. 24 Comp. Gen. 667. * * * It is not believed that a duty assignment for a period in excess of five or six months reasonably could be considered to be of the short duration contemplated by such term. * * *"

In this case the December 27, 1974 orders contemplated a period of temporary duty at Wildflecken for 5 months during which the billeting area would be renovated, upon completion of which the battalion would return to its permanent duty station, Schweinfurt. Compare 38 Comp. Gen. 656, supra. The orders directed a "temporary change of station" which, under Army Regulation 310-10, paragraph 2-5 (change 6, October 18, 1974), is treated the same as temporary duty orders. Although the temporary duty was extended for an additional 3 months, a total of 8 months, because the renovation work was not completed, the circumstances and language of the orders indicate that temporary duty was intended by the order-issuing authority and not a permanent change of station.

It appears that the member's permanent duty station (Schweinfurt) was a town 38 miles from the temporary duty station (Wildflecken). In such a case, a valid determination can be made that the unit movement fits the definition of "temporary duty" as

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set forth in the JTR. See our decision 52 Comp. Gen. 751 (1973), 50 Comp. Gen. 729 (1971); and 37 Comp. Gen. 669 (1958).

It therefore appears that even though there was no change of mission of the unit to which Captain Blazek was assigned, the movement of the unit from Schweinfurt, the permanent duty station, to Wildflecken was in fact an assignment of temporary duty as a unit. As a member of that unit Captain Blazek was in a travel status while assigned temporarily to Wildflecken and was entitled to per diem at the unit rate for an officer, \$6.70.

Therefore, since Wildflecken has been determined to be a temporary duty station, question (a) is answered in the negative. Question (b) is answered in the affirmative in this case since the wording in the orders appears to reflect the intent of the order-issuing authority and appears to be in accord with the factual situation. Since question (a) has been answered in the negative, question (c) is also answered in the negative.

However, paragraph 2-5b of Army Regulation 310-10 (change 4, June 15, 1973), specifically provides that no individual or organization will be placed on continuous temporary duty at one location for a period in excess of 180 calendar days without prior approval of Headquarters, Department of the Army. Since there is nothing in the submission to indicate such prior approval was obtained for extending the period of temporary duty beyond 180 days, there is no authority for paying per diem in excess of the first 180 calendar days at Wildflecken. 54 Comp. Gen. 368, 371 (1974).

Also, since the orders directed a unit movement, it appears that group travel to and from the temporary duty station was contemplated. Compare 45 Comp. Gen. 599 (1966) and B-168806, February 27, 1970. In such a case per diem is not authorized for the periods of travel between the duty stations. See 1 JTR, paragraphs H4103 (change 245, July 1, 1973) and H4251-13 (change 258, August 1, 1974).

Accordingly, payment may be made on the voucher, which is returned, on the basis indicated above, limited to the first 180 calendar days of temporary duty, excluding periods of group travel, and of course excluding periods of leave or field duty.

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While we have determined that per diem is payable in this case we note that the amount allowed, especially to officers, may be in excess of the actual expenses incurred by such officers in connection with extended temporary duty of this nature. In view thereof we believe that the Per Diem, Travel and Transportation Allowance Committee should consider modifying the regulations involved so that, in the future, situations do not arise in which per diem entitlements thereunder are in excess of the added subsistence expenses reasonably incurred by the members concerned.

Deputy Comptroller General
of the United States