

19372

DECISION



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

FILE: B-203925

DATE: September 2, 1981

MATTER OF: Randall G. Ciechna - Per Diem During
Active Duty for Training

DIGEST: Reserve member on active duty for training for 35 days at a service school where Government quarters and messing facilities are available is not entitled to per diem. Prohibition against payment of per diem to Reserve members during annual training where Government quarters and messing facilities are available is also applicable to periods of active duty for training. Army Regulations provision which permits member to use other than Government facilities is not applicable to a reservist attending military service school.

This action is in response to the appeal by Warrant Officer Randall G. Ciechna, USAR, of the settlement of our Claims Group, dated September 30, 1980, which disallowed his claim for per diem while on active duty for training. Because Mr. Ciechna's training duty was performed at a post where Government mess and quarters were available to him, his claim may not be allowed.

Mr. Ciechna was ordered to active duty for training for a period of 35 days at the Army Service School at Fort Benjamin Harrison, Indiana, beginning January 23, 1977. He claims per diem for this period. He indicates that his original orders to that training required that he use Government quarters at Fort Harrison. However, Mr. Ciechna requested a review of the regulations to determine whether authority existed for him to live off-post during this period of active duty for training. He states that pursuant to his request, he was informed by an employee of the Army Reserve Command Comptroller Office that the provisions of paragraph 1-46c(1), Army Regulations (AR) 37-106, authorized his use of non-Government quarters. Following this his orders were changed to read, "Government quarters and messing not required * * *."

However, after Mr. Ciechna arrived at Fort Harrison, the Finance Officer there determined that the regulation

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cited in his orders which purported to authorize him to reside in non-Government quarters was not applicable to him in his situation. Therefore, payment was not made on his claim for per diem expenses.

The regulation, which sets forth those circumstances in which a member is not required to use Government quarters and messing facilities, provides that when the use of such facilities would adversely affect the member's performance of assigned duties, the authority issuing the order is to issue a Code "B-5" statement, so stating. The Army Regulations for issuing travel orders require that this statement, which reads: "Use of existing Government facility would adversely affect the performance of the assigned mission" is to be issued in accordance with Volume 1, Joint Travel Regulations (1 JTR) paragraph M4451.

Under para. M4451-1.1, 1 JTR, the Code B-5 statement "is not applicable to personnel attending service schools at an installation of the uniformed services." It appears, therefore, that Mr. Ciechna's orders did not include the required Code B-5 because the regulation under which it is to be issued was not applicable to his assigned tour of duty. Consequently, his use of non-Government facilities was not authorized by AR 37-106, para. 1-46c(1), as stated in his orders.

Mr. Ciechna's letter of appeal implies that he believes the Claims Division's denial of his claim on the basis of 1 JTR, paragraph M6000-1a(3)1 was improper because that provision pertains to Reserve or retired members performing annual training duty and not to members, such as Mr. Ciechna, who are on active duty for training.

The statutory authority under which a Reserve member who is called away from home to perform duty is entitled to per diem while at his post of duty is 37 U.S.C. § 404(a)(4). Under that statute he may be paid per diem even though he is not in a travel status since that post is his only duty station; that is, he is not on temporary duty away from his permanent station. Concerning the legislative intent of 37 U.S.C.

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§ 404(a) (4), which is the statutory authority for paragraph M6000-1, 1 JTR, we stated in 48 Comp. Gen. 517, 522-523 (1969):

"On page 15 of S. Rept. No. 732, 90th Cong., * * * it is stated that the Department of Defense has indicated that payment of per diem would not be authorized during annual active duty training periods where Government quarters and messing were in fact available at a military installation.

"While those statements refer to periods of active duty for training, we believe they should be viewed as reflecting an intent that the right to per diem should be denied generally to reservists on tours of duty of less than 20 weeks' duration at military installations where Government quarters and mess are provided for them.

* * * * *

"* * * a reservist on duty at a station where mess and quarters are provided for him may not be paid a per diem.* * *" (Emphasis added.)

We also stated in that same decision:

"* * * the purpose of [37 U.S.C. § 404(a)] clause (4) is to permit payment of per diem to reservists ordered from their homes for short periods (less than 20 weeks) of duty while at the training duty station in cases where quarters and mess are not available and the law is not limited as to the type of duty being performed* * *." 48 Comp. Gen. 517, 521.

Since the authorizing statute is applicable to Reserve members on annual training and on active duty for training, and since Government quarters and mess were available, we conclude that Mr. Ciechna was not entitled to per diem for the period of active duty for training. Accordingly, the settlement of the Claims Division is sustained.



Acting Comptroller General
of the United States

UNITED STATES GOVERNMENT

19372
GENERAL ACCOUNTING OFFICE

Memorandum

September 2, 1981

TO : Associate Director, AFMD - Claims Group - (Room 5858)

Milton J. Fowler
FROM : Acting Comptroller General

SUBJECT: Claim for per diem or actual expenses by Mr. Randall G. Ciechna, USAR, while in active duty for training - B-203925-O.M.

Returned is claim file Z-2821524 pertaining to the subject claim. By our decision of today, copy attached, we have sustained the disallowance of Mr. Randall G. Ciechna's claim for per diem while on active duty for training.

Attachments - 2