

**DECISION**

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

FILE:

B-186141

DATE: JUL 27 1976

MATTER OF:

Gregory F. Pariseau and Rickey A. Tevebaugh -  
travel per diem allowances under Missing  
Persons Act

DIGEST:

Employee, who enters a missing status while on temporary duty travel in connection with which he has been authorized per diem, is not entitled under Missing Persons Act, 5 U.S.C. §§ 5561 and 5562 (1970), to have his account credited with such allowance. The term "station per diem allowances" appearing at 5 U.S.C. § 5561(6)(F) does not include temporary allowances in the nature of per diem for temporary duty travel.

Ernest G. Cummins, an authorized certifying officer at the Denver office of the Bureau of Land Management, U. S. Department of the Interior, on March 16, 1976, forwarded for advance decision two vouchers for payment of per diem under the Missing Persons Act. The vouchers in the amounts of \$340 and \$660, respectively, are presented on behalf of the dependents of Messrs. Gregory F. Pariseau and Rickey A. Tevebaugh.

The two men, who were employees of the Bureau of Land Management, Anchorage, Alaska, District Office, were en route to a temporary duty station at Yakataga, Alaska, via Government-controlled aircraft on May 5, 1975. The airplane crashed and it was later determined that all persons on board were killed instantly. Mr. Pariseau's body was recovered on May 13, and Mr. Tevebaugh's body was recovered several days later on May 21. Both employees were determined to be in a missing status until their bodies were recovered. By virtue of that status, their accounts are entitled to be credited with the benefits provided under the Missing Persons Act as codified at Chapter 55, subchapter VII of Title 5 of the United States Code.

The specific claims for per diem at a rate of \$40 per day are made pursuant to the following provision of 5 U.S.C. § 5562(a):

"(a) An employee in a missing status is entitled to receive or have credited to his account, for the period he is in that status, the same pay and allowances to which he was entitled at the beginning of that period or may become entitled thereafter."

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The term "pay and allowances" as used therein is defined at 5 U.S.C. § 5561(6) as follows:

- "(6) 'pay and allowances' means -
- (A) basic pay;
  - (B) special pay;
  - (C) incentive pay;
  - (D) basic allowance for quarters;
  - (E) basic allowance for subsistence; and
  - (F) station per diem allowances for not more than 90 days."

The issue is whether a per diem allowance for travel is payable. In view of the statement in 55 Comp. Gen. 147 (1975) that such an allowance was not payable under earlier language of the Missing Persons Act, the certifying officer asks whether the phrase "station per diem allowances" appearing at 5 U.S.C. § 5561(6)(F) is different from temporary duty per diem.

In 55 Comp. Gen. 147, supra, we quoted from the Hearings on H. R. 4405 (subsequently enacted as Public Law 78-408, 59 Stat. 695) before the House Committee on Naval Affairs, 78th Cong., 2d. Sess. 2343 (1944):

"It has been administratively determined that pay and allowances to be credited during absence include all continuing pay and allowances to which entitled at beginning of absence but not temporary allowances such as per diem for travel expense. H. R. 4405 retains the present language and change is not deemed necessary."

Nothing in the Missing Persons Act prior to August 29, 1957, however defined the statutory phrase "same pay and allowances."

In 1947, this Office addressed the issue of whether a travel per diem allowance could be paid under section 2 of the Missing Persons Act to an individual who had been held as a Japanese prisoner of war. In concluding that the phrase "same pay and allowances" did not contemplate payment of temporary allowances in the nature of travel per diem, we referred to the above-quoted language from the Hearings on H. R. 4405 and to the following language to the same effect appearing in House Report No. 1674, 78th Cong., 2d Sess. 5 (1944):

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"(b) A person is entitled to receive or to have credited to his account the pay and allowances he was entitled to receive at the beginning of such period of absence or which he may become entitled to thereafter. Initially or subsequently included are credits for foreign duty and sea pay, submarine, aviation, and parachute pay, longevity, medal pay, uniform allowances, rental, subsistence and quarters allowances, increases incident to promotion and longevity, and other pay and allowances that may be authorized by law. Temporary or per diem allowances are not included." (Emphasis added).

The unsuccessful claimant, Herman P. Hevenor, pursued his claim to litigation and, in the case of Hevenor v. United States, 121 Ct. Cl. 77 (1951), the Court of Claims upheld our holding that travel per diem allowances are not allowable under section 2 of the Missing Persons Act. Compare Dilks v. United States, 118 Ct. Cl. 438 (1950).

The decision in the Hevenor case is not, however, conclusive on the issue of per diem entitlement in the present case because the Missing Persons Act was further amended in 1957 to specifically enumerate the categories of pay and allowances recoverable. By Pub. L. No. 85-217, 71 Stat. 491, August 29, 1957, section 2 of the Act was amended to provide in part as follows:

"Sec. 2. (a) Any person who is in the active service or is performing full-time training duty, or other full-time duty, or inactive duty training and who is officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force shall, for the period he is officially carried or determined to be in any such status, be entitled to receive or to have credited to his account the same basic pay, special pay, incentive pay, basic allowance for quarters, basic allowances for subsistence, and station per diem allowances for not to exceed ninety days, to which he was entitled at the beginning of such period of absence or may become entitled thereafter, \* \* \*." (Emphasis added).

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The enumeration of specific items of pay and allowances appearing at 5 U.S.C. § 5561(6) (1970) as enacted by Pub. L. No. 89-554, 80 Stat. 489, September 6, 1966, is derived from this provision. See S. Rep. No. 1380, 89th Cong., 2d Sess. 118 (1966).

In 44 Comp. Gen. 127 (1964), in considering a claim for family separation allowance, we discussed the effect of the 1957 amendment of section 2 of the Missing Persons Act. In holding that the family separation allowance could be paid, we concluded in part that by the precise enumeration of pay and allowances Congress intended to exclude the crediting of temporary allowances. We relied upon the following explanation at H. Rep. No. 204, 85th Cong., 1st Sess. 4 (1957) of the manner in which H. R. 5807, ultimately enacted as Pub. L. No. 85-217, supra, differed from earlier legislative proposals:

"2. The committee bill also qualifies the type of pay and allowances which could be received under its provisions. The Department proposal would have authorized the payment of travel per diem for any person who was in a per diem status when he became missing. The committee did not favor this type of payment and consequently spelled out in the committee bill the type of pay and allowances which could be paid in the future."

See also the discussion contained at 44 Comp. Gen. 657, 658 (1965) indicating that a "station per diem allowance" is distinct from an allowance for travel per diem.

For the foregoing reasons, the claims for per diem for temporary duty travel presented on behalf of Messrs. Pariseau and Tevebaugh may not be certified for payment.

R.F.KELLER

~~Deputy~~

Comptroller General  
of the United States