

DOCUMENT RESUME

02902 - [A1953018]

[Travel and per Diem Incident to Change of Station]. B-188462.
July 11, 1977. 5 pp.

Decision re: Stuart C. Froehling, Jr.; by Robert F. Keller,
Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Military Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Department of the Army.

Authority: 37 U.S.C. 404-406. 53 Comp. Gen. 44. B-173236 (1971).
B-180394 (1974). B-180666 (1975). 1 J.T.R., para. M7010-1a.
1 J.T.R., para. M4205-3e(1)a. 1 J.T.R., para. M4256-2. 1
J.T.R., para. M4159-1. 1 J.T.R., para. M4158-1a. 1 J.T.R.,
para. M4205L(1). 1 J.T.R., Appendix A. 1 J.T.R. ch. 4, part
F. Army Regulation 635-100.

A former member of the U.S. Army claimed entitlement to personal and dependent travel, as well as per diem, incident to a change of station made in conjunction with his involuntary separation from the Army. The member was entitled to per diem based on the time required to travel from the Canal Zone to the normal processing station for personnel returning for separation on a constructive basis, but not for time required to travel to a more distant station selected by him. Per diem allowance for temporary duty in Hawaii was limited by regulations covering an officer on temporary duty in Hawaii where both Government quarters and Government mess were available. (Author, SC)

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DECISION



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

FILE: B-188462

DATE: July 11, 1977

MATTER OF: Stuart C. Froehling, Jr., USA

- DIGEST:**
1. Where member travels from the Canal Zone to a duty station for the primary purpose of separation processing, he is entitled to per diem based upon the time required to travel from the Canal Zone to the normal processing station for personnel returning for separation on a constructive basis and not for time required to travel to a more distant station selected by him for his convenience.
 2. Per diem allowances for temporary duty in Hawaii are paid under the authority of 37 U.S.C. 405 (1970) and Part F, Chapter 4 and Appendix A of Volume 1 of the Joint Travel Regulations (1 JTR). However, the per diem authorized was limited by paragraphs M4256-2 and M4205-3a(1)a of 1 JTR for an officer on temporary duty in Hawaii where both Government quarters and Government mess were available.

This action is in response to a letter dated February 3, 1977, from Mr. Stuart Froehling, a former member of the United States Army, concerning his entitlement to personal and dependent travel as well as per diem incident to a change of station made in conjunction with his involuntary separation from the United States Army, which, in effect, constitutes an appeal from a settlement by the Claims Division of this Office dated January 11, 1977, which disallowed his claim in part.

The record shows that by Special Orders Number 132, dated July 10, 1975, issued by Headquarters, United States Army, Canal Zone, the member was transferred on a permanent change of station (PCS) to United States Army Support Command Hawaii (Fort Shafter) with a reporting date of August 10, 1975. The special instructions in those orders identified the move as being for separation purposes

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in conjunction with the Involuntary Release/Discharge Program of the FY 76 reduction in force (in accord with paragraph 3-58b of Army Regulation (AR) 635-100). The member's orders also authorized concurrent travel of his wife to Hawaii and stated that only one move of dependents and household goods was authorized in conjunction with separation.

The member and his wife traveled from Fort Clayton, Canal Zone, to Hawaii between August 7 and August 11, 1975, utilizing transportation requests and Military Airlift Command (MAC) flights. Upon arrival at Fort Shafter, the member's basic orders were amended to change his unit of assignment in Hawaii to the U.S. Army Overseas Replacement Detachment for separation processing. The member performed temporary duty at Fort Shafter, Hawaii, from August 11, 1975, until his separation from the Army on September 28, 1975. The member and his wife apparently resided in a hotel in Hawaii from August 11 to October 10, 1975, the member having been issued a certificate of nonavailability of both Government quarters and mess. In this connection, the file shows that Government quarters and messing facilities were actually available to him, but that the certificate was issued only because the member's wife had accompanied him.

The settlement of January 11, 1977, authorized payment of a per diem allowance as well as personal and dependent travel allowances to his home of selection, Honolulu, Hawaii, incident to that separation, in the gross amount of \$460.80. The voucher authorizing payment was in the net amount of \$238.80 (\$460.80 less unliquidated travel advance of \$222).

The settlement was calculated on the basis of 1 day per diem at \$11.80 for the day of travel, August 10, 1975, and 49 days reduced per diem at \$8.30 a day for the period August 11, 1975, through September 28, 1975. The total allowed for per diem was \$418.50 and represented a total of 50 days. In addition, the settlement authorized the payment of \$42.30 for miscellaneous expenses representing taxi and bus fares, tips and baggage handling charges.

While it is not specifically stated in Mr. Froehling's letter it would appear that the settlement is being appealed on the basis that since he was issued a certificate of nonavailability of

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Government quarters and messing facilities for the entire period he was located at Fort Shafter, he is entitled to the full per diem at the rate of \$40 per day.

There are two separate and independent concepts involved in this case which give rise to the claimant's entitlements incident to his release from active duty and travel to his home of selection. First, under the provisions of 37 U.S.C. 404(a) and (c) (1970) the claimant is entitled to travel and transportation at Government expense for himself upon a PCS move from his old duty station to his home of selection incident to release from active duty, including per diem during periods of temporary duty en route. Second, under the provisions of 37 U.S.C. 406(a) and (g) (1970), the claimant is entitled to travel and transportation at Government expense for his dependent and movement of his baggage and household effects from his old duty station to his home of selection incident to such separation or release.

With regard to the claimant's entitlement on behalf of his dependent, there is no authority for such dependent to travel at Government expense to a member's duty station where the primary purpose for his assignment is for separation processing, since such assignment is considered temporary duty. See 53 Comp. Gen. 44 (1973); B-173236, September 30, 1971; B-180394, December 24, 1974; and B-180666, July 18, 1975. However, where the claimant's home of selection is at the same location as his point of separation, his dependent may travel to that location for that purpose under his PCS orders, and he may be reimbursed for such travel. See 1 JTR M7010-1a.

Thus, while the claimant and his wife traveled together to Hawaii, upon their arrival at that location, she had completed her travel to his home of selection, but because he had not been separated, his travel had not been completed due to his temporary duty assignment at Fort Shafter. Therefore, whatever rights he had under the provisions of 37 U.S.C. 404(a) and (c), including per diem subsequent to leaving his old duty station in the Canal Zone and his actual separation, were individual to him and the presence of his dependents had no bearing on such rights.

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Implementing regulations for the travel and transportation authorizations contained in 37 U.S.C. 404 are found in Volume 1 of the Joint Travel Regulations (1 JTR).

The authority for payment of travel and transportation expenses of a member of the Armed Forces traveling under PCS orders for purposes of separation from the service to a processing station located in the United States from a station outside the United States is set forth in paragraph M4159-1 of 1 JTR (change 270). That paragraph provides generally that a member is entitled to the allowances prescribed elsewhere in the JTR's for the official distance from the old duty station and its appropriate port of embarkation, transportation from there to the appropriate port of debarkation serving the new station and allowances to the new duty station. While the member did perform that type of travel during the period August 7 through August 11, 1975, paragraph M4158-1a of 1 JTR (change 265), modifies that entitlement and provides in pertinent part:

"A member who * * * is authorized, as distinguished from directed, to travel from his last permanent duty station to a processing station of his own choice and for his own convenience, and from such processing station to home of selection * * * will be entitled to the travel and transportation allowances prescribed * * * for such travel not to exceed the travel and transportation allowances to which the member would have been entitled had he been ordered to the appropriate processing station prescribed by Service regulations and retired or released to inactive duty thereat. * * *"

The implementing Army Regulations (AR 635-10) specify that for Army personnel stationed in the Panama Canal Zone, the appropriate processing station for personnel returning to the United States for separation is Fort Jackson, South Carolina.

Based on the foregoing JTR provisions, the member was paid per diem for 1 day based upon constructive travel, representing the time which would be required to travel by air from the Canal Zone to Fort Jackson, South Carolina, for outprocessing, had he not received permissive orders to be separated in Hawaii. The

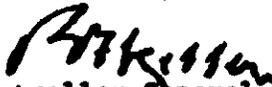
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rate of per diem for that constructive day of travel was set forth in paragraph M4205b(1) of 1 JTR (change 265) as \$11.80. Although the member did not actually travel to Fort Jackson, South Carolina, the limitations imposed by M4158-1a limited the amount of per diem for which he could be paid for travel to the time required to travel to the normal processing station. See B-173236, September 30, 1971.

The authority for payment of per diem for members of the Armed Forces on temporary duty in Hawaii is provided in 37 U.S.C. 405 (1970) and as such, constitutes an exception to the per diem dollar limitation contained in 37 U.S.C. 404(d) (1970) and also provides that "dependents may not be considered in determining the per diem allowance for a member in a travel status."

Implementing regulations for temporary duty allowances (per diem) for Alaska, Hawaii, and other areas outside the United States are set forth in Part F of Chapter 4 and Appendix A of 1 JTR. The per diem allowance for Fort Shafter, Hawaii, as set forth in Appendix A, 1 JTR (change 270) for officers of the Armed Forces was \$40 per day. However, that rate of per diem was limited by paragraphs M4256-2 (change 265) and M4205-3e(1)(a) (change 265) of 1 JTR to \$8.30 per day for officers whenever both Government quarters and mess were available to them, whether or not they are used. The member was paid per diem at this rate for 49 days from August 11, 1975, the day of his arrival at Fort Shafter, Hawaii, until and including September 28, 1975, the date of his separation, since quarters and messing facilities were available to him individually.

Accordingly, based on the record before us the action taken by our Claims Division is correct and is sustained.


Deputy Comptroller General
of the United States