



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

B-178394

October 10, 1973

40059

Major Ira J. Malter, USAF, MC
USAF Academy Hospital
USAF Academy, Colorado 80840

Dear Major Malter:

Further reference is made to your letter dated March 23, 1973, in which you request further consideration of your [claim for mileage] from New York, New York, to Sheppard Air Force Base, Texas, less mileage paid to you for travel from St. Louis, Missouri, to Sheppard Air Force Base, Texas, incident to your call to extended active duty in August 1971.

You were advised in the settlement from our Transportation and Claims Division, dated September 19, 1972, that since you received your orders at St. Louis, Missouri, the place to which they were addressed, your entitlement to the travel allowance extends from there, where you were ordered to active duty, to your duty station. Further, that the fact that after you received your active duty orders you traveled from St. Louis, Missouri, to New York, New York, for your personal convenience and from there to your duty station, does not increase your entitlement to a travel allowance, citing paragraph H6005-3 and H4156, case 1 of the Joint Travel Regulations as having application.

You contend that since your orders contained New York, New York, as your home of record, you should be entitled to travel pay from there since it has been determined by the Air Force that you did in fact leave for active duty from that location. Further, you contend that when you traveled to New York you were not on active duty, and the Air Force had no right to expect you to remain in St. Louis, suggesting that otherwise the Air Force would be unjustifiably obligating you to remain in St. Louis.

The record shows that by Special Order AB-2353, dated April 22, 1971, issued by Headquarters, Air Reserve Personnel Center, Department of the Air Force, you were ordered to extended active duty for 24 months beginning August 7, 1971, for service at the United States Air Force Academy Hospital and were directed to report to the Medical Service School, Sheppard Air Force Base, Wichita Falls, Texas, on August 8, 1971, for a tour of temporary duty to attend the Officer Basic Military Training, Medical Course 11080104 prior to your reporting to the United States Air Force Academy Hospital for permanent duty.

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Those orders were addressed to you at 7403 Hardscrapple Drive, St. Louis, Missouri 63123, which was shown in those orders to be your temporary address. Your home of record was shown as 435 East 79th Street, New York, New York 10021.

The statutory authority for payment of travel and transportation allowances, generally, is contained in section 404 of title 37, United States Code, which provides that under regulations provided by the Secretaries concerned, members of the uniformed services shall be entitled to receive certain allowances for travel performed "under orders." Paragraph M3000 of the Joint Travel Regulations provides that no reimbursement for travel is authorized unless orders by competent authority have been issued therefor. Paragraph M3001 of the same regulations defines a "competent travel order" as a written instrument issued or approved by proper authority directing or authorizing a member to travel between two designated points.

It has long been held that travel allowances authorized for members of the uniformed services are for the purpose of reimbursing them for the expenses incurred in compliance with travel requirements imposed upon them by the needs of the service over which they have no control, not for expenses of travel performed for personal reasons. Perrinond v. United States, 19 Ct. Cl. 509 (1884); Day v. United States, 123 Ct. Cl. 10 (1952). See also 30 Comp. Gen. 226 (1950) and 49 Comp. Gen. 663 (1970).

Item 1 of Special Order AB-2355, shows your mailing address for the purpose of those orders to be 7403 Hardscrapple Drive, St. Louis, Missouri 63123 and that you would depart from that address for active duty. Since the record shows that you were living at that address and received your orders at that address, therefore, for the purpose of determining your entitlement to a travel allowance such address constituted the beginning point of your authorized travel to the location of your duty station by the normally traveled route.

Thus, based upon your orders as originally issued, any travel which you performed which was not in direct compliance with those orders must be considered as travel performed for personal reasons and the cost of which must be borne by you.

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The file shows further that on August 22, 1971, you arrived at your permanent duty station, the United States Air Force Academy Hospital, and by DD Form 149 dated September 1, 1971, you apparently applied for a correction of your military records to show that you were authorized to depart for active duty from your home of record in New York, New York, rather than from St. Louis, Missouri.

By administrative action dated September 22, 1971, you were informed that the place of your departure for active duty to be in error; that you actually departed for active duty from your home of record address in New York and that the September 22 letter was in lieu of an amendment to your basic orders.

It is a well-established principle that legal rights and liabilities with regard to travel allowances vest as and when travel is performed under orders and that such orders may not be revoked or modified retroactively so as to increase or decrease the rights which have accrued or become fixed under those orders, after the ordered travel has been performed. An exception to this rule has been recognized when an error is apparent on the face of the original orders, or that all the facts and circumstances clearly demonstrate that some provision, which was previously determined and definitely intended, had been omitted through error or inadvertence in preparing the orders. Katzer v. United States, 51 Ct. Cl. 32 (1917); 23 Comp. Gen. 713 (1944); 24 Comp. Gen. 439 (1944); 35 Comp. Gen. 148 (1955) and 44 Comp. Gen. 405 (1965).

It appears from the file that you were in residency at the Mallinckrodt Institute of Radiology, St. Louis, at the time you received your orders and had been so located there for the 3-year period prior to receipt of your orders. We find nothing in the file to indicate that anything other than that stated in the original orders was intended or that there is any error on the face of the orders as originally issued. In fact, in your letter of October 29, 1971, addressed to ACF/Sgt Justice, in which you applied for additional travel expenses, you stated that your reason for returning to New York from St. Louis was your inability to extend your apartment lease in St. Louis beyond July 31, 1971, without having to pay a full month's rent for August. Thus, it appears reasonably evident that had you been permitted to remain in your St. Louis apartment for several additional days in August 1971 before reporting for active duty, you would have done so, and initiated your travel from St. Louis. In the circumstances, there is no authority to amend your orders retroactively to increase your travel rights for travel already performed.

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Accordingly, the action taken by our Transportation and Claims
Division disallowing your claim is sustained.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States