

DECISION



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

FILE: B-181893

DATE: SEP 16 1975

MATTER OF: Housing, cost-of-living and travel per diem allowances - , M42, USN

- DIGEST:
1. Member was on permanent duty on vessel homeported at Pearl Harbor, Hawaii, when he was injured and ordered to temporary duty for medical treatment at Pearl Harbor. Such orders for treatment do not effect a permanent change of station. Therefore, member on off ship crew of two-crew nuclear submarine who continued to reside off base and who subsequently married is eligible for station housing and cost-of-living allowances, otherwise proper.

 2. Member was on permanent duty on vessel homeported at Pearl Harbor, Hawaii, when he was injured and ordered to temporary duty for medical treatment at Pearl Harbor but as a member of the off ship crew of two-crew nuclear submarine he continued to reside in non-Government housing. Since his orders for treatment did not effect a permanent change of station, he remained permanently assigned to the vessel and entitled to travel per diem as authorized by regulation, i.e., for period prior to May 1, 1974, entitlement existed under paragraph M4250-16, 1 JTR (ch. 236, October 1, 1972) since statement of commanding officer that member would incur no additional subsistence expense was not included in his orders. However, effective May 1, 1974 (change 255), per diem was precluded without requirement of such statement.

 3. Member was on permanent duty on vessel homeported at Pearl Harbor, Hawaii, when he was injured and ordered to temporary duty for medical treatment at Pearl Harbor. Such orders do not effect a permanent change of station. Member's entitlement to travel per diem is limited to 180-day period, since in accord with paragraph M3003-2c and d,

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1 JTR (currently para M, 3004-1 and 2) temporary duty in excess of 6 months at same location was not authorized by appropriate authority.

This action is in response to a request for an advance decision from the Disbursing Officer, Navy Regional Finance Center, FPO San Francisco 96610, dated June 17, 1974, which was forwarded to this Office by endorsement dated July 22, 1974, from the Per Diem, Travel and Transportation Allowance Committee and which was assigned PDTATAC Control No. 74-31. The request concerns the payment of housing, cost-of-living and travel per diem allowances to Machinist's Mate Second Class _____, USN, _____, incident to temporary duty for medical treatment at Naval Station, Pearl Harbor, Hawaii.

The record shows that the member was assigned to the U.S.S. James Monroe (SSBN 622) (Blue) homeported in Pearl Harbor, when on November 28, 1972, he was injured in line of duty. On December 5, 1972, the member agreed to be retained beyond his normal date of expiration of enlistment, December 28, 1972, in order to obtain continued medical treatment for that injury. By Standard Transfer Order No. 70-72, dated December 11, 1972, the member was ordered to report to the Naval Medical Holding Company, Naval Base, Pearl Harbor, for temporary duty treatment and further disposition, where he reported on December 28, 1972. In March 1973, while undergoing treatment the member sustained further injury and apparently continued in his treatment status thereafter until separated from active duty subsequent to May 10, 1974.

It appears that Petty Officer Ross prior to his temporary duty for medical treatment was permitted to live in non-Government housing while not at sea as a member of the off ship crew of a two-crew nuclear submarine. When injured he was residing in non-Government housing and in addition to basic allowance for quarters was paid station housing and cost-of-living allowances. These allowances reportedly were terminated incident to the member's temporary duty status effective December 28, 1972. The member was married on October 31, 1973, and reportedly was authorized to reside with his dependent off base, thereafter.

Petty Officer _____ has claimed housing and cost-of-living allowances incident to his marriage on October 31, 1973. Additionally, he claims travel per diem allowances effective December 28, 1972. The disbursing officer expresses doubt regarding the legality of payment of station housing and cost-of-living allowances when a

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member is assigned to temporary duty in the area of his prior permanent duty station with no permanent duty station assigned. Also, he is doubtful regarding the payment of travel per diem in such circumstances.

The statutory authority for station housing and cost-of-living allowances is 37 U.S.C. § 405 (1970), which provides that the Secretaries concerned may authorize the payment of a per diem, considering all elements of the cost of living to members of the uniformed services under their jurisdiction and their dependents, including the cost of quarters, subsistence, and other necessary incidental expenses, to such a member who is on duty outside the United States or in Hawaii or Alaska, whether or not he is in a travel status. However, dependents may not be considered in determining the per diem allowance for a member in a travel status.

ch 4) Regulations issued pursuant to 37 U.S.C. § 405 are contained in part G, Volume 1 of the Joint Travel Regulations (1 JTR), paragraph M4301-1 of which provides that housing and cost-of-living allowances are authorized for the purpose of defraying the average excess costs experienced by members on permanent duty at places outside the United States and are in addition to basic allowance for quarters and subsistence.

Under the provisions of paragraph M4301-3c(1) change 247, September 1, 1973 (currently para. M4301-3g(1)), members with dependents are entitled to cost-of-living allowances notwithstanding the availability of a Government mess to the member at his permanent station (including a vessel). Under the provisions of paragraph M4301-3c(2) change 247, September 1, 1973 (currently para. M4301-3g(2)) housing allowances are payable to a member with dependents at all times except when Government quarters are assigned to, or occupied jointly by the member and his dependents.

Paragraph M3050-1, 1 JTR, provides that members of the uniformed services are entitled to travel and transportation allowances only while actually in a travel status, and 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 periods of temporary duty. Paragraph M1150-10a of the regulations, change 228, February 1, 1972, defines the term "permanent station" as the post of duty or official station to which a member is assigned or attached for duty other than temporary duty or temporary additional duty. This definition, with the additional

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specification that the post of duty or official station includes a ship in regards to the member's personal travel, currently appears in Appendix J, ¶1 JTR.

We have held that the permanent station of a member of a uniformed service is the place where his basic duty assignment is performed. Orders to a hospital for the purpose of observation or treatment do not effect a change of permanent station, since the assignment is to a place where no duty is required of him. 48 Comp. Gen. 603 (1969) and decision B-166564, May 26, 1969. See also decision B-177293, January 9, 1973.

Accordingly, the U.S.S. James Monroe remained the member's permanent duty station during the period he was assigned to the Naval Medical Holding Company, Naval Base, Pearl Harbor, for temporary duty treatment. Since it appears that the vessel continued to be homeported at Pearl Harbor during such period, Petty Officer had basic entitlement to housing and cost-of-living allowances, which may be paid to him at the appropriate rates for the period claimed, if otherwise proper.

With respect to travel per diem, Petty Officer as a member of the crew of a two-crew nuclear submarine, was residing ashore for the purpose of training and rehabilitation when he was assigned to temporary duty at the hospital. Under paragraph 4059-3 of the United States Naval Travel Instructions (1971 ed.) he was not entitled to per diem while in a training and rehabilitation status at the home port. However, upon assignment to the home port on temporary duty the prohibition of payment of travel per diem contained in that regulation no longer applied. In that connection paragraph M4250-16, ¶1 JTR, change 236, October 1, 1972, provided as follows:

"* * * No per diem allowance is payable for temporary duty performed away from the member's permanent duty station at a place to which he may commute daily from his permanent quarters. This prohibition applies only when the member's commanding officer finds, and specifically states in the orders, that the member will incur no additional subsistence expenses. * * *"

Change 240, February 1, 1973, added the statement that "The term 'permanent quarters' includes the permanent residence of the

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member's dependents in the vicinity of the home port or the home yard when the permanent duty station is a ship or an afloat staff." Change 255, May 1, 1974, deleted reference to the commanding officer's statement.

Since the member's orders dated December 11, 1972, did not contain a statement that he would incur no additional subsistence expense, in accord with para. M4250-16 when in effect, he was not prohibited from travel per diem on the basis of temporary duty away from his permanent duty station, U.S.S. James Monroe, on the basis that he commuted daily from his permanent quarters. Such prohibition without the necessity of the commanding officer's statement became effective on May 1, 1974. See decision B-174602, September 29, 1972, regarding a similar provision applicable to temporary duty allowances within the United States (48 contiguous States and the District of Columbia).

However, paragraph M3003-2c, 1 JTR, change 234, August 1, 1972 (currently para. M3004-1) provides that except when authorized in accordance with subparagraph d (currently subpara. 2) temporary duty at any one location will be limited to periods not in excess of 6 months. Subparagraph 2d provides that when unusual or emergency circumstances or exigencies of the service arise such cases may be authorized by the appropriate authority of the service concerned. In the absence of such authorization, we have held that per diem allowances may not be paid for a period in excess of 180 days. See 54 Comp. Gen. 368 (1974); B-173498, November 30, 1971. It is noted further that in endorsement dated May 10, 1974, to the member's claim for travel per diem allowances, in addition to housing and cost-of-living allowances, the Commanding Officer, Naval Station, Pearl Harbor, stated that "Government mess and berthing were available to Petty Officer during the entire period of his Temporary Duty."

In view of the above the member is entitled to travel per diem allowances on the basis that Government quarters and meals were available to him for a period not in excess of 180 days commencing December 28, 1972.

R. F. [Signature]
Comptroller
of the United States