

DECISION

1566



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

UNRESTRICTED MIL

FILE: B-220721

DATE: June 12, 1986

MATTER OF: [REDACTED], USAF, Reserve

DIGEST:

An Air Force Reserve member ordered to active duty with her consent for a period of more than 20 weeks at the same location is at her permanent duty station and is not entitled to travel per diem while there. She, however, may receive travel per diem payments for several periods of temporary duty at locations other than the permanent duty station.

[REDACTED], USAF, Reserve, requests review of the disallowance^{1/} of her claim for per diem in connection with her 148-day tour of active duty at Scott Air Force Base, Illinois. Since a member of a Reserve component called to active duty for 20 weeks or more is considered to be at her permanent duty station, and no per diem is payable for this period of active duty except when the member is away from the permanent station on temporary duty, the denial is sustained.

By orders of September 16, 1981, [REDACTED] was ordered to active duty with her consent at Scott Air Force Base, Illinois, for a period of 151 days. She was to serve 9 days in fiscal year 1981 from September 21 to 29, 1981, and then 142 days in fiscal year 1982, from October 1, 1981, to February 19, 1982. Subsequently, her orders were amended to reduce her total tour of duty to 148 days by reducing the 142 days in fiscal year 1982 to 139 days.

The amended orders came about because, under applicable Air Force regulations, when Reserve members perform tours of duty in excess of 139 days in a fiscal year, advance approval by appropriate Air Force authority is required.^{2/}

^{1/} The General Accounting Office's Claims Group disallowed the claim by settlement certificate, dated March 2, 1984.

^{2/} See Air Force Regulation 35-41, para. 8-4.c.

B-220721

██████████ had already performed 139 days of active duty in fiscal year 1981 and hence, for her 9 days in September 1981, a waiver had been obtained. According to the individual who authorized this waiver for ██████████, he did so because of a need to fill an essential position on short notice, and he was aware that ██████████ was available. He goes on to note that this 9-day period was not intended to be part of ██████████ already scheduled 139-day tour which was to commence on October 1, 1982.

Subsection 404(a)(4) of title 37, United States Code, provides in part that:

"(a) Under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed or to be performed under orders, without regard to the comparative costs of the various modes of transportation--

* * * * *

"(4) when away from home to perform duty, including duty by a member of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, in his status as a member of the National Guard, for which he is entitled to, or has waived, pay under this title."

Reservists generally perform only intermittent periods of active duty and thus do not have a permanent station from which to be ordered away to perform temporary duty. The quoted provisions were enacted to authorize the payment of per diem to reservists ordered away from their homes for short periods (less than 20 weeks) of active duty at a station where a mess and quarters are not provided. Thus, this statutory authority permits payment of per diem to a reservist on active duty for less than 20 weeks on the same basis as per diem is payable to an individual on continuous active duty who is ordered away from his permanent station to another location to perform temporary duty. 48 Comp. Gen. 301, 304 (1968).

B-220721

The regulations implementing that authority make it clear that Reserve members ordered to active duty for over 20 weeks at the same duty station are not entitled to receive a per diem or actual expense allowance. See 1 Joint Travel Regulations, paragraphs M6000-1c(1)(2), and (3) (Ch. 352, June 1, 1982). See also [REDACTED]

[REDACTED] B-203525, March 15, 1982. When a Reserve member is ordered to duty for more than 20 weeks at the same location, the location where she is ordered to perform the duty is considered her permanent station at which temporary duty allowances may not be paid. See, e.g., 48 Comp. Gen. 301, supra; [REDACTED]

B-207840, January 10, 1983. We have held that this includes situations where more than one set of orders are issued for active duty and each set of orders is for less than a 20-week period, but the total period exceeds 20 weeks, and notwithstanding that the periods of duty are separated by 1-day breaks in service. The only exception to this is where the extension of active duty is ordered because of unforeseen circumstances. See 48 Comp. Gen. 655 (1969); [REDACTED]

B-188882,

August 23, 1977.

[REDACTED] orders make it clear that, when they were issued, the order issuing authority contemplated that she would perform active duty for over 20 weeks on a continuous basis at the same location, Scott Air Force Base. Therefore, Scott Air Force Base was her permanent duty station and she is not entitled to per diem while performing duty at Scott Air Force Base.

The case record does reveal that while on this tour of active duty [REDACTED] did receive orders to perform temporary duty at places other than Scott Air Force Base. As the Claims Group's settlement indicated, she was entitled to receive per diem while on this temporary duty away from Scott. [REDACTED]

B-207840, supra.

Accordingly, the Claims Group's settlement denying [REDACTED] claim is sustained,

Milton F. Howler

Acting Comptroller General
of the United States

SUBSISTENCE

Per Diem

Military Personnel

Temporary Duty

Time Limitation

Twenty Weeks

SUBSISTENCE

Per Diem

Military Personnel

Reservists