



DEPARTMENT OF DEFENSE
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REDACTED COPY

Matter of: Claim of

File: Department of Defense General Counsel Opinion:
DoD/GC #97-8

Date: December 8, 1997

DECISION

The Chief of the Financial Services Branch, Pacific Air Forces, Department of the Air Force, has requested a decision regarding the claim of [REDACTED] for per diem and transportation expenses for the period of October 1, 1993, to January 9, 1994.

[REDACTED] graduated from the United States Air Force Academy on June 2, 1993, and was given permanent change of station (PCS) orders to Misawa, Japan. He was ordered to perform temporary duty training enroute at Keesler Air Force Base, Mississippi. He completed the training on August 19, 1993, and went on leave awaiting a port call of September 5, 1993. On September 1, 1993, he was telephonically ordered to report back to the Air Force Academy immediately. No explanation was given for this order. Upon his arrival at the Academy on September 3, 1993, he was advised that he would be involved with an investigation that was being conducted by the Air Force Office of Special Investigations. His PCS orders were then amended to change his reporting date to his new permanent duty stations from September 11, 1993, to September 30, 1993. At that time, he was allowed transportation and per diem. He was also provided government billeting. On September 14, 1993, his orders were amended a second time to change his reporting date to October 31, 1993. On October 8, 1993, his PCS orders were amended a third and final time to change his reporting date to February 24, 1994. As part of the final amendment, an additional statement was added to his orders. It said:

General TDY reporting instructions: Purpose of TDY-Utilization of graduates awaiting training. Pursuant to JTR, vol I, para U7000-B, officers assigned TDY to USAF Academy are not entitled to per diem...Date:931001-940225."



At that time, [redacted] was removed from government billeting and his government transportation was reclaimed. No alternatives were made available to him. Further, estimates of the duration of the investigation were unreliable. In addition, [redacted] was not permitted to associate with any friends in the area. Ultimately, he was cleared of any charges. On January 9, 1994, he departed the Academy and proceeded to his permanent duty station.

Lt. Warbington has claimed per diem and car rental expenses for the period October 1, 1993 to January 9, 1994 because he feels that the application of paragraph U7000-B of the JFTR was not justified in his case.

Paragraph U7000-B of the Joint Federal Travel Regulation concerning the travel of cadets and midshipmen to and from the service academies provides:

B. Upon Graduation and Commission. An officer graduated from a Service academy when traveling under competent orders to the first permanent duty station (PDS) is entitled to PCS allowances prescribed in Chapter 5. Such allowances are authorized for the distance traveled under the orders, not to exceed the official distance from the member's home or the Service academy, designated in the orders, to the first PDS via any temporary duty (TDY) station directed en route including the Service academy in cases involving authorized travel from home. When travel to the first PDS involves TDY at the academy from which graduated before reporting to the first PDS, no per diem is payable for such period of TDY.... (emphasis added)

We have been advised that this regulation is intended to employ graduates between graduation and training in order to avoid excessive TDY expenses. The graduates are already in the area and know the length of time they have to wait before their training begins. Thus, they can make arrangements for lodging and transportation.

It is our opinion that the application of this provision of the regulation in the case of [redacted] is not within the intent of the rule. [redacted] had already departed the Academy, completed his training and was awaiting his port call to go to his first PDS when he was recalled to the Academy. Additionally, his belongings had already been shipped to his new PDS. It is also clear that the length of time he would have to remain at the Academy was uncertain in view of the numerous changes to his

original orders regarding his reporting date and the fact that he left the Academy almost two months prior to the last reporting date in his orders. This is contrary to a graduate awaiting the beginning of training with a certain date. The uncertainty prevented [redacted] from making any long-term lodging arrangements thereby increasing his out-of-pocket expenses. Finally, it is clear that [redacted] recall to the Academy was under unusual circumstances and unforeseen at the time his original PCS orders were issued; certainly, not the normal situation in which graduates are retained at the Academy prior to attending training on their way to their first permanent duty station.

Accordingly, we find that [redacted] is entitled to the applicable rate of per diem and reimbursement for transportation cost for the period of October 1, 1993 to January 9, 1994.

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(Fiscal)