



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

B-177190

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February 5, 1973

Mr. Jeffery R. Ivan
1100 Rosemary, Apartment 3
Denver, Colorado 80220

Dear Mr. Ivan:

We again refer to your letter dated September 15, 1972, requesting review of settlement dated July 29, 1971, which disallowed your claim for commuted rations for the period January 5 to March 14, 1971, incident to your Naval service.

In a letter dated March 23, 1971, to the Commanding Officer, Navy Finance Center, Cleveland, Ohio, claiming commuted rations for the period indicated above, you stated that on arrival at your new duty station, Naval Air Station, Albany, Georgia, you were not informed of the requirement to resubmit a request for commuted rations and that you had not been issued a meal pass and further that thereafter you were not subsisted in a general mess at that station. On the same date the Commanding Officer, Reconnaissance Attack Squadron THIRTEEN, FPO, New York, New York 09501, placed an endorsement on your letter recommending approval of your request and stating that the facts as presented were verified for accuracy inasmuch as a meal pass had not been issued to you probably because of an administrative error and that commuted rations were started on DD Form 113 effective March 15, 1971.

The Navy Finance Center forwarded your claim to our Claims Division (now Transportation and Claims Division) on May 14, 1971, for settlement and on July 29, 1971, it disallowed your claim for the reason that the records fail to disclose the submission of a request by you for separate rationing for the subject period, approved concurrently by your commanding officer. On September 15, 1972, you requested a review of the settlement which disallowed your claim.

The governing provision of law, 37 U.S.C. 402, authorizes the payment of a basic allowance for subsistence to an enlisted member of the uniformed services "when permission to mess separately is granted." Paragraph 2640150-7, Bureau of Naval Personnel Manual, specifies that regulations concerning payment of commuted rations are contained in pay directives. Also, subparagraph "a" of that paragraph stipulates that enlisted personnel on duty where a general mess is operated and

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who are assigned to subsist therein may be authorized to mess separately and be paid a commuted ration and subparagraph "i" states that no enlisted member shall be allowed to commute his ration and subsist himself without authority.

The pay directives mentioned in the preceding paragraph are embodied in the Department of Defense Military Pay and Allowances Entitlements Manual. Paragraph 30131a thereof provides that authorizations to mess separately cannot cover retroactive periods.

Under the above law and regulations the payment of a commuted rations allowance to a Navy enlisted member stationed at an activity where a Government mess is available is dependent upon a showing that prior to the period involved he not only executed an application to mess separately but that such request was approved by proper authority. In this connection, the record shows that while you reported for duty with your organization on January 4, 1971, it was not until March 15, 1971, that you made an application for separate rationing. That application, which was approved effective March 15, 1971, bears the statement "RVAH-13 HAS NO RECORD OF P.O. IVAN PREVIOUSLY APPLYING FOR COMMUTED [COMMUTED] RATIONS." Accordingly and since the requirements of the law and regulations were not met, no authority exists for payment of the commuted rations allowance to you for any period preceding March 15, 1971, the date your application was approved by the appropriate authority.

The fact that Reconnaissance Attack Squadron THIRTEEN admits that there was an administrative error in your case does not provide a legal basis to pay you the allowance contrary to the governing law and regulations.

In view of the foregoing, the settlement of July 29, 1971, is sustained.

Very truly yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States