



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

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W-117489

August 6, 1973

Major F. D. Brady
Disbursing Officer
Marine Corps Disbursing Office
Through Commandant of the Marine Corps (Code CD)

Dear Major Brady:

By letter dated September 29, 1972, file reference CD-was 7293, with enclosures, forwarded here by endorsement dated November 16, 1972, of the Per Diem, Travel and Transportation Allowance Committee, you request an advance decision concerning the entitlement of First Lieutenant Timothy D. Jones, 307 52 78 64, U.S. Marine Corps Reserve, to per diem for the period April 16 through June 4, 1970, incident to temporary duty performed at Camp Lejeune, North Carolina. Your request was assigned PDTATAC Control No. 72-56.

Headquarters United States Marine Corps permanent change-of-station orders, dated January 20, 1970, addressed to a number of Marine Corps officers including Lieutenant Jones, directed him after detachment from duty under instruction at the Basic School, Quantico, Virginia, about March 11, 1970, to proceed and report on April 15, 1970, to the Marine Corps Base, Camp Lejeune, North Carolina, for temporary duty under instruction for a period of about 8 weeks. Those orders further directed him to proceed to the 2nd Marine Division, Fleet Marine Force, Camp Lejeune, upon completion of the stated temporary duty and provided for the travel of his dependents and household goods at Government expense.

Pursuant to the above orders Lieutenant Jones reported to Camp Lejeune on April 15, 1970. However, prior to that date, that is, on April 9, 1970, by message of the Commandant of the Marine Corps, addressed to the Commanding General, Marine Corps Base, Camp Lejeune, the above orders were amended so as to direct Lieutenant Jones to report for duty with Fleet Marine Force Pacific (Marine Corps Base, Camp Butler, Okinawa) rather than with 2nd Marine Division, Fleet Marine Force, Camp Lejeune, upon completion of temporary duty about June 5, 1970. The Commandant's message was received by Headquarters, Marine Corps Service Support Schools, Marine Corps Base, Camp Lejeune,

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on April 22, 1970, and on the basis thereof the personnel officer of that Command addressed a modification of orders notification to Lieutenant Jones. That notification letter was received by Lieutenant Jones on April 27, 1970, 12 days after he had reported to Camp Lejeune.

You say in your letter of September 29, 1972, that there is no evidence that Lieutenant Jones had knowledge of the amendment before April 27, 1970, and that he was detached from Camp Lejeune on June 5, 1970.

In your comment concerning the entitlement of Lieutenant Jones to per diem for the period April 16 through June 4, 1970, you refer to our decision, 34 Comp. Gen. 427 (1955), in which we held that a member ordered to report for permanent duty at one Washington, D.C., installation and to perform prior "temporary duty" at another Washington installation may not be considered to have been traveling away from his designated post of duty so as to be entitled to per diem for the "temporary duty" or duty period, even though at the time he was performing such "temporary duty" amendatory orders were issued which directed him to proceed to another permanent duty station. You express doubt concerning the applicability of that holding in this case inasmuch as the amendatory orders involved in the case covered by the decision were not actually issued until after the member had commenced "temporary duty." You also refer to our decision, 43 Comp. Gen. 833 (1964), in which we said that, as a general rule an order, individual in its operation, does not become effective until delivered to the person concerned, unless he had prior knowledge of the contents of the order or was responsible for any delay in its delivery.

You also say that you are in doubt whether the amendatory orders should be effective on April 27, 1970, when Lieutenant Jones was notified of the change of his permanent duty station or April 9, 1970, the date of those amendatory orders. In this connection, you mention that if the April 27, 1970, date is considered as the effective date the rule set forth in 34 Comp. Gen. 427, supra, would apply, thus precluding payment of per diem during the period of Lieutenant Jones' "temporary duty" at Camp Lejeune.

The governing statutory authority, 37 U.S.C. 404, provides that under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed under competent orders upon a change of permanent station, or otherwise, or when away from his designated post of duty regardless of the length of time he is away from that post. The

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pertinent implementing regulation, paragraph M4201-4 (Change 206, dated March 1, 1970) of the Joint Travel Regulations (now paragraphs M4201-4 and M4201-5), precludes payment of per diem to a member for any period prior to the day of departure from the limits of the permanent duty station or for any travel or temporary duty performed within the limits of the permanent duty station other than that authorized for the day of return to the permanent duty station under paragraph M4205.

Concerning the principle enunciated in 43 Comp. Gen. 833, supra, mentioned above, that as a general rule an order, individual in its operation, does not become effective until delivered to the person concerned, that principle has its limitations.

It is not for application in cases, such as Lieutenant Jones', where a member's right to certain entitlements become fixed upon the issuance of orders and amendments which establish his particular duty status which continues so long as the member properly complies with those orders and amendments prior to the issuance of additional amendments or new orders. In other words, Lieutenant Jones' entitlement to per diem for temporary duty performed away from his permanent duty station, Camp Butler, became fixed upon the issuance of the amendatory orders of April 9, 1970, which changed the new permanent duty station from Camp Lejeune to Camp Butler. Since he was in a temporary duty status for the entire period he was undergoing instruction at Camp Lejeune, for this purpose it is immaterial whether he was timely notified of the amendatory orders inasmuch as he fully complied with the basic order, as amended.

These circumstances must be distinguished from those in which a member serving at a temporary duty station is issued orders designating it as his permanent station. In such event, under the principle stated in 43 Comp. Gen. 833, supra, where the member had no knowledge of the orders or was not responsible for its delayed receipt, he will be permitted to continue to receive temporary duty allowances until receipt of orders.

In view of the above, per diem is properly payable to Lieutenant Jones for the entire period he was on temporary duty at Camp Lejeune.

Sincerely yours,

PAUL G. DEMBLING
For the Comptroller General
of the United States