

DECISION



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

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FILE: B-185847

DATE: MAY 26 1976

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MATTER OF: Daniel Gallup and Henry K. Bearden -
Meritorious claims

- DIGEST:
1. Where the record does not clearly indicate that the claimant's own misconstruction of applicable regulations and possible lack of care did not contribute to his incurrence of temporary lodging expenses beyond the period for which a temporary lodging allowance is payable, his claim for reimbursement of such expenses will not be reported to Congress under the Meritorious Claims Act, 31 U.S.C. § 236 (1970).
 2. Claim of retired employee for reimbursement for the cost of mailgram, telephone call, and stamps used to correspond with the Civil Service Commission and his former installation in regard to the incorrect termination of his health benefit enrollment will not be reported to Congress under the Meritorious Claims Act, 31 U.S.C. § 236 (1970).

By letter of January 29, 1976, the Department of the Air Force, Headquarters, Pacific Air Forces, has submitted for consideration for reporting to Congress under the Meritorious Claims Act of 1928, 31 U.S.C. § 236 (1970), the claims of Messrs. Daniel Gallup and Henry K. Bearden. As set forth at 31 U.S.C. § 236 (1970), the Meritorious Claims Act provides for reporting of claims for consideration by Congress as follows:

"When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress,

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he shall submit the same to the Congress by a special report containing the material facts and his recommendation thereon."

Mr. Gallup's claim in the amount of \$1,372.35 arises in connection with his reporting for duty with the 18th Combat Support Group, Okinawa, Japan. The employee reported for duty as an attorney-adviser on March 12, 1975, and was subsequently joined by his wife and two children on June 26, 1975. Prior to the arrival of his family, Mr. Gallup went to the installation's civilian personnel office to inquire as to his entitlement to receive the temporary lodging allowance provided for at Part 120 of the Standardized Regulations (Government Civilians, Foreign Areas). The precise nature of the conversation that occurred between the employee and civilian personnel officials is unclear. However, Mr. Gallup claims that as a result of that conversation he terminated his occupancy of bachelor quarters upon his family's arrival in Okinawa and on June 26, 1975, moved his family into the Okinawa Hilton Hotel, believing he would be reimbursed for the cost thereof by means of a temporary lodging allowance. In fact the Standardized Regulations provide at paragraph 123.2 that entitlement to a temporary lodging allowance terminates at latest "three months after the date of first arrival of the employee at a new post, or of his family if earlier." Because Mr. Gallup and his family began their occupancy of hotel accommodations more than 3 months beyond March 12, 1975, when he had reported for duty, reimbursement for the cost of these accommodations was denied.

Headquarters, Pacific Air Forces, recommends favorable consideration of Mr. Gallup's claim for \$1,372.35 based upon its belief that he acted in good faith, upon the erroneous advice of an Air Force civilian personnel official, in incurring lodging costs in this amount.

The Meritorious Claims Act is an extraordinary remedy, the proper use of which is limited to unique situations where claimants, through no fault of their own, have suffered such harshly unjust or grossly unfair treatment that failure to grant them this avenue of seeking redress would be unconscionable. Its use is accordingly limited to cases involving

equitable circumstances of an unusual nature. 53 Comp. Gen. 157 (1973). For these reasons we have restricted our recommendations to Congress for relief under the Act to cases in which the record clearly supports the conclusion that the claimant did not contribute to his own losses and where the equities are otherwise compelling.

In reviewing the record submitted in support of his claim, we find that the equitable merit of Mr. Gallup's claim for relief is not altogether clear. In a memorandum dated October 6, 1975, the claimant states that he was erroneously told by a personnel official at the Kadena Air Base, Okinawa, Japan, that the temporary lodging allowance was payable to him "on a reimbursable basis for monies expended for lodging for himself and family for a period of time commencing on their arrival not to exceed 3 months thereafter." For the purpose of pursuing his claim, Mr. Gallup obtained the affidavit of the civilian personnel official (Laura Vlaanderen) allegedly responsible for wrongly advising him with respect to his entitlement. The content of that affidavit is in part as follows:

"Mr. Daniel Gallup came to my office sometime in the late spring or early summer of 1975. I recall that I pulled certain regulations and read them to him. Because I cannot remember the conversation I cannot say that I went from the regulation and made my own interpretation. Also, my job is not to give interpretations, but merely to inform the employee of the applicable regulations.

"I do remember that Mr. Gallup asked me about temporary lodging allowance, but I do not remember any dates concerning the arrival of his family.

"Mr. Gallup mentions in his affidavit that I pulled his personnel file, but as I recall, I did not.

"I remember that he came in a second time and that we exchanged cordialities, but I do not remember the gist of the conversation.

"I want it specifically noted that I did not quote Mr. Gallup anything without the regulation being right there."

Based on the above excerpt and a reading of the claimant's own affidavit, it is clear only that the civilian personnel official involved read to Mr. Gallup from the Standardized Regulations. In this regard, the statement contained in his own affidavit dated July 23, 1975, is as follows:

"Mrs. Vlaanderen, after looking into her regulations on the subject (I believe, but am not certain, also looking into my personnel file) orally informed me that there would be no problem and that when my family arrived I should terminate by BOQ and move into a hotel * * *.

* * * * *

"On 23 June 1975, I, again, personally went to the Kadena Air Base Civilian Personnel Office and sought confirmation from Mrs. Laura Vlaanderen of my Temporary Lodging Allowance authorization or rights. I requested, and Mrs. Vlaanderen complied, by looking the question of eligibility up in the Government civilian regulation book relating to TLA, located in her desk. She read aloud to me the portions of this regulation that she felt applicable and I particularly recall her reading the following: that the commencement of the entitlement could also begin to run on 'the date expenses for temporary lodging are incurred.' She concluded by saying that I had within 3 months from the date for TLA entitlement to run; however, she stated I must be expending efforts to find housing within this period, and be able to show that such efforts were expended."

The Standardized Regulations in fact state that entitlement to a temporary lodging allowance shall commence upon the happening of one of four events or on "the date expenses for temporary lodging are incurred." However, insofar as here applicable, the very next paragraph of that same part of the regulations, entitled "Termination," provides for termination of the temporary lodging allowance at latest "three months after the date of first arrival of the employee at the new post, or of his family if earlier." It is unclear from the record whether the civilian personnel official involved did more than advise the claimant as to the regulation's requirements and there is some suggestion that Mr. Gallup may himself have misinterpreted the language of the regulation related to him. The claimant apparently had some concern that he might not be entitled to a temporary lodging allowance, as evidenced by his return visit to the personnel office and his express request that the civilian personnel official read him the regulation itself. Under these circumstances we are not persuaded that Mr. Gallup's action in moving his family into hotel accommodations was solely attributable to erroneous advice given him by a Government official and that he was not himself partly responsible for his misconception as to temporary lodging allowance entitlement.

Accordingly, we do not believe that Mr. Gallup's claim contains such elements of legal liability or equity as are contemplated by the Meritorious Claims Act and therefore it will not be submitted to Congress under the provisions of that law.

The second claim submitted for our consideration is that of Mr. Henry K. Bearden who, upon retirement from Federal service, was incorrectly informed that his enrollment in the Federal employee's health benefits program was about to be terminated and who expended \$59.57 for correspondence to rectify the error.

Mr. Bearden retired from the Air Force on June 9, 1975, and on July 10, 1975, received a Standard Form 2810, "Notice of Change in Health Benefits Enrollment," advising him that his health benefits had been terminated on June 21, 1975,

and that he had a period of 31 days from that date within which to convert his enrollment to a non-group contract. In fact the retiree's health benefit enrollment should have been transferred to the Civil Service Commission, with health benefit deductions being made from his retirement annuity payments.

To determine the basis for termination of his benefits, Mr. Bearden telephoned the Civil Service Commission but was unable to obtain any information. The long-distance telephone charge for that call was \$5.27. Because he would have had less than 2 weeks within which to convert to a non-group contract if the termination of benefits was proper, the retiree then sent a mailgram from Ohio to Okinawa, Japan, at a cost of \$54.04 inquiring as to the propriety of the termination and seeking information that would be necessary to apply for conversion to a non-group contract in the event that should be necessary. In response to the mailgram his enrollment was properly transferred to the Civil Service Commission. In addition to the foregoing charges, Mr. Bearden has included in his claim the 26-cent cost of the stamp necessary to mail his claim to Kadena Air Force Base, Okinawa, Japan.

As indicated in the above discussion of Mr. Gallup's claim, the remedy provided by the Meritorious Claims Act is an extraordinary one. The cases we have reported for the consideration of Congress generally have involved equitable circumstances of an unusual nature and which are unlikely to constitute a recurring problem since to report to Congress a particular case when similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances.

The 26-cent cost of the stamp included in Mr. Bearden's claim is clearly the type of cost that any individual incurs in corresponding with the Government. The other costs which he incurred are similar in nature to those incurred by any individual who deals with the Government and who, in order

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to protect his rights, communicates by means more expeditious than the regular mails. For this reason we do not find that Mr. Bearden's claim presents such equitable considerations as warrant reporting to Congress under the Meritorious Claims Act.

R.F. KELLER

Deputy

**Comptroller General
of the United States**