



D-179331

October 19, 1973

40087

Lieutenant Colonel R. F. Roscoe, USAF
Director, Accounting and Finance
Headquarters United States Air Force Academy
Through Headquarters Air Force Accounting
and Finance Center
3800 York Street
Denver, Colorado 80205

Dear Colonel Roscoe:

This refers to your letter dated July 10, 1973, received in this Office on August 1, 1973, in which you request an advance decision concerning the propriety of payment of a travel claim submitted by Mr. Rodney Vessels, a candidate for admission to the United States Air Force Academy, under the circumstances hereinafter set forth. Your request has been assigned PDTATAC Control No. 73-37 by the Par Dieu, Travel and Transportation Allowance Committee.

You say that Mr. Vessels was notified that he was medically qualified for pilot training on January 24, 1973. Subsequently he was issued an "Invitation to Travel" from his home in Aylett, Virginia, to the United States Air Force Academy, Colorado. The invitation to travel stated that it was issued for the purpose of Mr. Vessels' acceptance of an appointment as a cadet of the United States Air Force Academy, class of 1977, and that he was to arrive on July 2, 1973.

Mr. Vessels, it is reported, arrived at the academy on July 2, 1973, by private automobile and at that time was found medically disqualified for acceptance as a cadet into the academy class of 1977, due to the existence of the sickle cell anemia trait which had been overlooked during his initial physical examination. It is indicated that apparently this trait had been present from his birth. As a result, you say Mr. Vessels was not administered the oath prescribed by the Secretary of the Air Force as required by 10 U.S.C. 9346(d). You say Mr. Vessels departed from the Academy by private automobile on July 3, 1973, and returned to his home in Aylett, Virginia.

In view of the foregoing, it is requested that a decision be rendered on the following questions:

PUBLISHED DECISION
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"a. Does entitlement to transportation at government expense accrue to a cadet candidate for travel from his home to a service academy, who is found to be medically disqualified for acceptance of an appointment through no fault of the candidate after arrival at the Academy and who was not allowed to take the prescribed oath?

"b. Does entitlement to transportation at government expense accrue to a cadet candidate for travel from the service academy back to his home, who is found to be medically disqualified for acceptance of appointment through no fault of the candidate after arrival at the Academy and who was not allowed to take the prescribed oath?"

The invitation to travel to Mr. Vessels provides in paragraph 4:

"Personnel who travel to the USAF Academy under this order who refuse to accept an appointment as a cadet or are unable to accept because of medical or other reasons will not be entitled to any travel allowances."

Paragraph 5 of the invitation to travel provides that travel allowances will be credited to the individual after he is admitted as a cadet. Paragraph 6 provides that travel is authorized in accordance with Chapter 5 of the Joint Travel Regulations and is necessary in the public service.

Section 410(a)(3) of title 37, U.S.C., provides in part that cadets of the United States Air Force Academy are entitled to such travel and transportation allowances provided by section 404 of that title as prescribed by the Secretaries concerned.

Chapter 5, Part A of Volume I of the Joint Travel Regulations contains regulations governing the travel of cadets and midshipmen of the service academies. Paragraph M5000-1 provides that a person entering one of the service academies will be entitled to the permanent change-of-station allowance prescribed for officer members in Chapter 4, Part D of the regulations for travel actually performed not to exceed the official distance between the place which he certifies was his actual permanent place of abode, home,

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school, or duty station at the time such travel commenced and the service academy involved. Paragraph M5002-2 provides in part that no travel and transportation allowances are payable under these regulations to civilians for travel performed in connection with any examinations preparatory to admission to any of the service academies.

It appears that on examination of the above-cited law and regulations that in order to be entitled to the prescribed allowances an individual traveling to accept an appointment must in fact accept the appointment and attain the status of a cadet. Therefore, as Mr. Vessels was not administered the prescribed oath he never attained the status of a cadet and, consequently, is not entitled to the allowances prescribed for cadets in paragraph M5000-1 of the Joint Travel Regulations.

However, section 410(a) of title 37, U.S.C., also provides that the following persons are entitled to such travel and transportation allowances provided by section 404 of this title, as prescribed by the Secretaries concerned:

- "(5) applicants for enlistment;
- (6) rejected applicants for enlistment;"

In accord with this statutory authority, paragraph M5050 of the Joint Travel Regulations (Travel and Transportation Allowances for Travel Incident to Enlistment Processing) provides as follows:

"1. GENERAL. Applicants for enlistment in the regular services or in reserve components shall be furnished transportation and meal tickets, if available, for travel from the place where they make application for enlistment or from their homes to the place(s) of physical examination, or place of acceptance for enlistment, or both, including return travel in the event that the applicant is rejected or is accepted and ordered to return home to await further orders or a reporting date.

2. REIMBURSEMENT. In the event that transportation requests and/or meal tickets are not available for issuance to applicants for the travel contemplated in

subpar. 1, reimbursement for transportation purchased from personal funds, supported by receipts if Pullman or parlor car accommodations are utilized, will be made on an actual cost basis (including tax), plus a per diem allowance for each day as authorized in par. M205-4."

Provisions regarding the transportation of rejected applicants were originally included in Navy and Army appropriations acts and were based primarily upon public policy, and the obligation of the Government to return the applicant to a place where he had been provisionally accepted and where he had been given preliminary examinations which indicated that he in all probability would be accepted into the armed services. In cases where an applicant is rejected as a result of later physical examinations given at some distance from his home, the Government assumes the obligation of paying his travel and transportation expenses for return to his home.

We are unable to consider a candidate for admission to one of the service academies who has successfully passed all the preliminary examinations and travels to the academy with the expectation based on prior Government action of being admitted to the academy, as any less entitled to travel and transportation allowances if rejected, than any other rejected applicant for entry into one of the uniformed services. Under such circumstances it is our view that the Government has an equally clear duty to provide travel and transportation allowances to and from authorized places to the academies for those candidates rejected under circumstances where through no fault of their own, the candidates are not admitted.

In the absence of some legislative expression to the contrary, there is no basis to impute to the Congress an intention to exclude persons, such as a cadet candidate for admission to one of the service academies, who performs travel to the academy at the invitation of the Government and who without fault on his part is rejected for admission because of a physical condition. We view the terms "applicants for enlistment" and "rejected applicants for enlistment" as used in 37 U.S.C. 410(a)(5) and (6), not in a restricted or technical sense, but broadly, as applying to those persons who seek to enroll in one of the uniformed services, including applicants for the service academies.

We have been advised, informally, that rejected candidates for the United States Military Academy and for the United States Coast

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Guard Academy are afforded round trip travel at Government expense, apparently being treated as rejected applicants for enlistment.

In view of the foregoing, we are of the opinion that Mr. Vessels properly may be reimbursed for travel from Aylett, Virginia, to the United States Air Force Academy, and for return travel to his home, in accordance with paragraph 45050-2 of the Joint Travel Regulations.

Accordingly, your questions are answered in the affirmative and Mr. Vessels' voucher is returned herewith payment being authorized if otherwise correct.

Sincerely yours,

H. F. Keller

Deputy

Comptroller General
of the United States

Enclosure