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B-155932, Feb 23, 1971

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B-155932, FEB 23, 1971

PER DIEM ALLOWANCE - TEMPORARY V PERMANENT DUTY STATION - DEBT OWED THE UNITED STATES DECISION DENYING CLAIM FOR PER DIEM TO CWO ROBERT E. JOHNSON, US ARMY, RET., INCIDENT TO HIS PERFORMING DUTY AT CAPE CANAVERAL (NOW CAPE KENNEDY), FLORIDA. WHEN, IN FACT, CAPE CANAVERAL WAS CLAIMANT'S PERMANENT DUTY STATION DETERMINED ON THE BASIS OF ALL INFORMATION INCLUDING THE ABSENCE OF TEMPORARY DUTY ORDERS APPROVED BY THE PROPER AUTHORITY AND THE DURATION OF THE DUTY AT CAPE CANAVERAL IN EXCESS OF THE 180 DAY LIMITATION FOR TEMPORARY DUTY, THEN THERE IS NO BASIS FOR PAYMENT OF A CLAIM FOR PER DIEM FOR THE DUTY INVOLVED. WITH REGARD TO CLAIMANT'S INDEBTEDNESS TO THE U.S. ARISING FROM A CLAIM PAID BY THE VETERANS ADMINISTRATION IN THE SUM OF $1,687.49 BECAUSE OF DEFAULT ON A GUARANTEED LOAN, IT SHOULD BE NOTED THAT ALL OF THE TRANSFEREE INCLUDING CLAIMANT, ALONG WITH THE ORIGINAL OBLIGORS, ARE JOINTLY AND SEVERALLY LIABLE FOR THE BALANCE DUE ON THE NOTE AND UNDER THE PROVISIONS OF THE FEDERAL CLAIMS COLLECTION ACT OF 1966, 31 U.S.C. 952 (SUPP. V) THE AGENCY IS DIRECTED TO LIQUIDATE THE INDEBTEDNESS AS QUICKLY AS POSSIBLE, NOT WITHHOLDING ACTION AGAINST ONE DEBTOR MERELY BECAUSE OTHER DEBTORS HAVE NOT PAID THEIR PROPORTIONATE SHARE.

TO MR. ROBERT E. JOHNSON:

FURTHER REFERENCE IS MADE TO YOUR LETTER OF NOVEMBER 14, 1970, AGAIN REQUESTING REVIEW OF YOUR CLAIM FOR PER DIEM FOR THE PERIOD DECEMBER 18, 1962, TO JANUARY 15, 1964, WHILE PERFORMING DUTY AT CAPE CANAVERAL (NOW CAPE KENNEDY), FLORIDA.

YOUR CLAIM WAS THE SUBJECT OF DECISIONS B-155932, DATED MARCH 17, 1965, MAY 11, 1965, AND OCTOBER 13, 1970. IN THOSE DECISIONS WE ADVISED YOU THAT SINCE THE TEMPORARY DUTY DIRECTED BY THE VARIOUS ORDERS IN YOUR CASE EXCEEDED 6 MONTHS AND THE ORDERS WERE NOT APPROVED BY PROPER AUTHORITY, THERE IS NO BASIS FOR THE ALLOWANCE OF YOUR CLAIM FOR PER DIEM FOR DUTY PERFORMED AT CAPE CANAVERAL.

WE CONCLUDED THAT IN THE CIRCUMSTANCES OF YOUR CASE CAPE CANAVERAL WAS IN FACT YOUR PERMANENT STATION AND THAT YOU WERE ENTITLED TO PER DIEM ONLY FOR PERIODS YOU WERE AWAY FROM CAPE CANAVERAL IN A TRAVEL STATUS UNDER COMPETENT ORDERS. SINCE YOU HAD MOVED YOUR DEPENDENTS TO CAPE CANAVERAL WE FURTHER CONCLUDED THAT YOU WERE ENTITLED TO A DISLOCATION ALLOWANCE. THEREFORE, ON MAY 14, 1965, OUR CLAIMS DIVISION ISSUED A SETTLEMENT IN YOUR FAVOR IN THE AMOUNT OF $286.55 CONSISTING OF $156.50 FOR PER DIEM AND $130.05 AS DISLOCATION ALLOWANCE.

YOU WERE FURTHER ADVISED THAT YOU COULD SUBMIT A CLAIM FOR REIMBURSEMENT OF EXPENSES INCURRED BY YOU IN HAULING YOUR HOUSEHOLD EFFECTS FROM FORT EUSTIS, VIRGINIA, TO CAPE CANAVERAL AT PERSONAL EXPENSE AND THAT SINCE YOU HAD HAULED

THE EFFECTS YOURSELF SUCH CLAIM SHOULD BE SUPPORTED BY EVIDENCE OF THE EXPENDITURES INCURRED AND THE WEIGHT OF THE SHIPMENT OR AN INVENTORY FROM WHICH THE CUBIC CONTENT MAY BE ESTIMATED AS REQUIRED BY CONTROLLING REGULATIONS.

IN YOUR PRESENT LETTER YOU SAY THAT YOU WERE SENT TO CAPE CANAVERAL UNDER TEMPORARY DUTY ORDERS; THAT DURING THE PERIOD YOU WERE AT CAPE CANAVERAL YOU WANTED TO BE RELIEVED AND RETURNED TO YOUR PARENT ORGANIZATION (FORT EUSTIS) BUT WERE UNABLE TO OBTAIN ORDERS, AND THAT AFTER SIX MONTHS THE PORT COMMANDER AT FORT EUSTIS ORDERED YOU TO VACATE QUARTERS. YOU SAY THIS IS WHEN YOU RETURNED TO FORT EUSTIS, PURCHASED A TRUCK AND MOVED YOUR FAMILY AND HOUSEHOLD EFFECTS AT PERSONAL EXPENSE AFTER ATTEMPTING TO OBTAIN PERMANENT CHANGE-OF-STATION ORDERS. YOU SAY CAPE CANAVERAL COULD NOT HAVE BEEN A PERMANENT STATION SINCE IT WAS IN A REMOTE AREA AND WITHOUT THE BARE ESSENTIALS FOR WORK OR LIVING.

WITH RESPECT TO YOUR CLAIM FOR MOVING YOUR HOUSEHOLD EFFECTS, YOU SAY IT WOULD BE IMPOSSIBLE TO OBTAIN GASOLINE AND OIL RECEIPTS TOGETHER WITH EVIDENCE OF THE WEIGHT OF THE SHIPMENT AND THAT YOU COULD ONLY GIVE AN APPROXIMATION OF THE EFFECTS SHIPPED BY CUBIC MEASUREMENT AND HAVE LONG SINCE SOLD THE TRUCK.

WHILE YOU NOW CONTEND THAT CAPE CANAVERAL COULD NOT HAVE BEEN A PERMANENT STATION BECAUSE OF ITS LOCATION AND LACK OF FACILITIES, THE RECORD SHOWS THAT ON MAY 6, 1963, YOUR COMMANDING OFFICER REQUESTED THAT YOU BE GIVEN A PERMANENT CHANGE OF STATION FROM FORT EUSTIS TO CAPE CANAVERAL AND THAT SUCH REQUEST WAS NOT APPROVED BECAUSE OF YOUR INTENTION TO RETIRE THE FOLLOWING JANUARY. WHETHER THE ASSIGNMENT TO A STATION IS PERMANENT OR TEMPORARY IS NOT ESTABLISHED BY THE GEOGRAPHICAL LOCATION OF THE STATION OR THE FACILITIES THEREAT BUT MUST BE DETERMINED ON THE BASIS OF ALL OF THE FACTS INVOLVED INCLUDING THE ORDERS ISSUED TO THE INDIVIDUAL MEMBER AND THE DURATION OF THAT DUTY.

SINCE THE TEMPORARY DUTY DIRECTED BY THE VARIOUS ORDERS IN YOUR CASE WAS FOR A PERIOD OF ABOUT 14 MONTHS AND THE ORDERS WERE NOT APPROVED BY PROPER AUTHORITY AS REQUIRED BY THE APPLICABLE REGULATIONS IN SUCH CASES, WE ARE REQUIRED TO ADHERE TO THE POSITION THAT CAPE CANAVERAL WAS IN FACT YOUR PERMANENT STATION.

AS EXPLAINED IN OUR DECISION OF MARCH 17, 1965, THE DUTY AT CAPE CANAVERAL EXCEEDED THE 180 DAY LIMITATION FOR TEMPORARY DUTY, EXCEPT UNDER UNFORESEEN CIRCUMSTANCES, AND WAS NOT APPROVED BY PROPER AUTHORITY AS REQUIRED UNDER THE REGULATIONS THERE SET FORTH. AND, AS POINTED OUT IN THAT DECISION, EFFECTIVE DECEMBER 17, 1962, YOUR ORDERS PROVIDED THAT THE DUTY AT CAPE CANAVERAL WOULD BE AT NO COST TO THE GOVERNMENT, INDICATING AN ADMINISTRATIVE DETERMINATION THAT PER DIEM WAS NOT AUTHORIZED BECAUSE YOUR ASSIGNMENT WAS TO BE FOR A PERIOD OF UNLIMITED DURATION RATHER THAN OF A TEMPORARY NATURE.

THEREFORE, EVEN THOUGH THE ADMINISTRATIVE OFFICE, BECAUSE OF YOUR APPROACHING RETIREMENT, REFUSED TO ISSUE PERMANENT CHANGE-OF-STATION ORDERS TRANSFERRING YOU TO CAPE CANAVERAL OR AN INSTALLATION NEARBY, WE ARE OF THE OPINION, AS PREVIOUSLY STATED, THAT YOUR BASIC DUTY ASSIGNMENT WAS AT CAPE CANAVERAL AND IT MUST BE REGARDED AS YOUR PERMANENT DUTY STATION DURING THE PERIOD INVOLVED. ACCORDINGLY, THERE IS NO BASIS FOR PAYMENT OF YOUR CLAIM FOR PER DIEM FOR THE DUTY INVOLVED. ALSO, SINCE YOU HAVE FURNISHED NO INFORMATION AS TO THE APPROXIMATE WEIGHT OF THE HOUSEHOLD EFFECTS WHICH YOU TRANSPORTED OR THE EXPENDITURES INCURRED, THERE IS NO BASIS ON WHICH FURTHER CONSIDERATION MAY BE GIVEN TO THAT CLAIM. IF, HOWEVER, YOU FURNISH A STATEMENT AS TO THE APPROXIMATE WEIGHT OF THE GOODS MOVED AND THE COST OF GASOLINE AND OIL USED IN THE MOVEMENT, SUPPORTED BY RECEIPTS, IF AVAILABLE, WE WILL GIVE FURTHER CONSIDERATION TO SUCH

CLAIM.

YOU ALSO REFER TO YOUR INDEBTEDNESS TO THE UNITED STATES ARISING FROM A CLAIM PAID BY THE VETERANS ADMINISTRATION IN THE SUM OF $1,687.49 BECAUSE OF DEFAULT ON GUARANTEED LOAN NO. LH 109484 FLA., AND CONTEND THAT THIS IS AN UNJUST CLAIM AGAINST YOU. WITHOUT REPEATING YOUR VARIOUS CONTENTIONS AND QUESTIONS RELATING TO THE INDEBTEDNESS WE TRUST THE FOLLOWING WILL BE HELPFUL TO YOU.

THE LOAN FOR THE PURCHASE OF THE PROPERTY HERE INVOLVED WAS OBTAINED FROM VANGUARD MORTGAGE COMPANY, MIAMI, FLORIDA, BY PETER B. NEFF AND HIS WIFE, LENA M. NEFF, A QUALIFIED VETERAN. THE VETERANS ADMINISTRATION GUARANTEED THE LOAN UPON HER APPLICATION PURSUANT TO SECTION 500, TITLE III OF THE SERVICEMEN'S READJUSTMENT ACT OF 1944, AS AMENDED, 38 U.S.C. 1803.

THE PROPERTY WAS SUBSEQUENTLY TRANSFERRED TO YOU AND YOUR WIFE, AND IN TURN TO ROY J. AND BETTY G. CROWLEY, JAMES TRIZZINO, AND WILLIAM H. AND PHILLIS L. BUTTS. THESE TRANSFERS WERE SUBJECT TO THE ORIGINAL MORTGAGE WITH ASSUMPTION OF LIABILITY FOR AND AGREEMENT BY EACH OF THESE TRANSFEREES TO PAY THE OUTSTANDING BALANCE DUE ON THE NOTE. THEREFORE, ALL OF THESE TRANSFEREES, ALONG WITH THE ORIGINAL OBLIGORS, WERE JOINTLY AND SEVERALLY LIABLE FOR THE BALANCE DUE ON THE NOTE. IF THERE WERE OTHER TRANSFERS THEY WERE ALSO ACCOMPLISHED SUBJECT TO THE ORIGINAL MORTGAGE BUT WITHOUT ASSUMPTION OF LIABILITY. WE HAVE NO RECORD OF NON-LIABLE TRANSFEREES.

UPON DEFAULT, FORECLOSURE PROCEEDINGS WERE INSTITUTED BY THE HOLDER OF THE NOTE, NOT THE VETERANS ADMINISTRATION. THE FORECLOSURE SALE WAS CONDUCTED UNDER STATE LAW UNDER THE POWERS CONTAINED IN THE MORTGAGE EXECUTED BY THE ORIGINAL BORROWERS. THAT INSTRUMENT SPECIFICALLY PRECLUDED THE NECESSITY OF GIVING PERSONAL NOTICE OF THE SALE TO EITHER THE ORIGINAL BORROWERS OR TO ANY SUBSEQUENT PURCHASERS WHO ASSUMED LIABILITY UNDER THE LOAN. NEITHER THE MORTGAGEE NOR THE VETERANS ADMINISTRATION HAD THE LEGAL RESPONSIBILITY TO REMAIN IN CONTACT WITH THE OBLIGORS TO KEEP THEM INFORMED OF THE STATUS OF THE LOAN AND THEIR POTENTIAL LIABILITY IN THE EVENT OF FORECLOSURE.

AT THE TIME OF FORECLOSURE, THE TOTAL INDEBTEDNESS, INCLUDING THE PRINCIPAL BALANCE, ACCRUED INTEREST AND FORECLOSURE COSTS WAS $19,237.49. THE VALUE OF THE PROPERTY WAS ESTABLISHED AS $17,550 WHICH AMOUNT WAS CREDITED TO THE LOAN ACCOUNT AND THE VETERANS ADMINISTRATION PAID THE HOLDER OF THE NOTE THE BALANCE OF $1,687.49. THE NOTE WAS THEN ENDORSED TO THE ADMINISTRATOR OF VETERANS AFFAIRS WHO THEREBY ACQUIRED THE RIGHTS OF THE ORIGINAL HOLDER TO THE EXTENT OF THE PAYMENT. THEREFORE, THE ORIGINAL OBLIGORS ALONG WITH TRANSFEREES WHO ASSUMED THE OBLIGATION (YOU AND YOUR WIFE AND THE OTHERS NAMED ABOVE) BECAME JOINTLY AND SEVERALLY LIABLE FOR THE AMOUNT OF THE LOSS SUSTAINED BY THE GOVERNMENT OR $1,687.49, PLUS ACCRUED INTEREST.

THERE IS NO AUTHORITY FOR APPORTIONMENT OF A JOINT AND SEVERAL LIABILITY INDEBTEDNESS. AS A GENERAL RULE ACTION FOR RECOVERY MAY BE TAKEN AGAINST ANY ONE OF THE LIABLE PARTIES SEVERALLY OR AGAINST THEM ALL JOINTLY. FURTHER, THE REGULATIONS PRESCRIBED UNDER THE FEDERAL CLAIMS COLLECTION ACT OF 1966, 31 U.S.C. 952 (SUPP. V), PROVIDE THAT WHEN TWO OR MORE DEBTORS ARE JOINTLY AND SEVERALLY LIABLE, COLLECTION ACTION WILL NOT BE WITHHELD AGAINST ONE SUCH DEBTOR UNTIL THE OTHER OR OTHERS PAY THEIR PROPORTIONATE SHARE, NOR SHOULD THE AGENCY ATTEMPT TO ALLOCATE THE BURDEN OF PAYING SUCH CLAIMS AS BETWEEN THE DEBTORS, BUT SHOULD PROCEED TO LIQUIDATE THE INDEBTEDNESS AS QUICKLY AS POSSIBLE. THEREFORE, ALL PAYMENTS RECEIVED ARE APPLIED TOWARD REDUCTION OF THE OVER-ALL DEBT WITH

CREDIT THEREFOR TO EACH INDIVIDUAL OBLIGOR'S ACCOUNT.

WITH RESPECT TO YOUR STATEMENT THAT YOU CANNOT PAY THIS DEBT, YOU ARE REQUESTED TO EXECUTE THE ENCLOSED FINANCIAL STATEMENT. IF YOU ARE SELF EMPLOYED OR OWN A BUSINESS YOU SHOULD FURNISH A STATEMENT OF ASSETS AND LIABILITIES. SUCH STATEMENT WITH YOUR PROPOSED ARRANGEMENT FOR PAYMENT OF THE INDEBTEDNESS PLUS INTEREST AT THE RATE OF 4 PERCENT PER ANNUM FROM MAY 13, 1966, TOGETHER WITH A CHECK OR MONEY ORDER PAYABLE TO "U.S. GENERAL ACCOUNTING OFFICE" IN FULL OR PARTIAL PAYMENT OF THE DEBT SHOULD BE FORWARDED TO THE UNITED STATES GENERAL ACCOUNTING OFFICE, P.O. BOX 2610, WASHINGTON, D. C. 20013, AT THIS TIME.