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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

IN REPLY
REFER TO: B-195708

OCT 17 1979

The Honorable James L. Oberstar
House of Representatives

Dear Mr. Oberstar:

We refer to your letter of July 15, 1979, regarding Staff Sergeant Lloyd R. Schleicher's [claim for reimbursement of the cost of his dependents' travel from Germany to the United States] In your letter you asked us to examine the congressional intent behind the passage of 37 U.S.C. § 406(h) and the implementing regulations, paragraph M7103-2 of Volume 1, Joint Travel Regulations (1 JTR). Specifically, you pose the question as to what is the purpose of the statute and the regulation if it does not enable travel reimbursement for situations such as the one encountered by Sergeant Schleicher.

Upon notification of the critical condition of his mother-in-law, on or about August 10, 1977, Sergeant Schleicher requested emergency leave and approval for the travel of his dependents, a wife and son, to the United States from his duty station in Germany. After verifying the situation, the Army issued a travel authorization on August 12, 1977, which allowed the dependents to return to the United States at no expense to the Government on a "space-available basis due to verified emergency." See Department of Defense Directive (Air Transportation Eligibility) 45.15.13-R (C2), para. 4-5.(3) (November 19, 1976). Because space-available travel on military transportation was estimated to require a 3-or 4-day wait, Sergeant Schleicher sent his dependents home on a commercial airline. He deemed the 3-or 4-day wait to be too long due to the critical condition of his mother-in-law. His mother-in-law died before his dependents landed in the United States. Subsequently, on the member's arrival in the United States his father-in-law requested that his wife remain in the United States to care for school age brothers and sisters. As a result his dependents did not return to Germany at the expiration of his emergency leave.

Sergeant Schleicher now seeks reimbursement for his dependents' travel expenses on the basis of para. M7103-2.7, Volume 1, Joint Travel Regulations (1 JTR). This regulation, which implements the provisions of 37 U.S.C. § 406(h), allows

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B-195708

the early return of a member's dependents from overseas in certain situations even when the member's permanent station remains unchanged. Under paragraph 2, subparagraph 7, it is stated that the serious illness of a close relative qualifies as a situation within the purview of the regulation when the return of the dependents is determined to be in the best interest of the Government and the member or his dependents. The regulation requires that such a determination be made by the Secretary of the Army or his designee.

CAO concurs
The Army denied this claim because no orders were issued authorizing travel under this regulation. See 1 JTR, para. M7103-1. With this determination by the Army, we must concur. We have repeatedly held that under the applicable law and regulations reimbursement for travel of the type in question may not be authorized unless the necessary administrative determination has been made before travel commenced. B-170734, October 16, 1970; B-167331, August 6, 1969; and B-158255, March 8, 1966. See also B-182778, October 30, 1975.

While we appreciate the circumstances behind the member's decision to use a commercial airline, we have no authority to waive the regulatory provisions which are applicable.

Regarding your specific question the purpose behind enactment of 37 U.S.C. § 406(h) was to provide broader authority for the return of service members' dependents from overseas at Government expense prior to the members' transfer. Existing law (37 U.S.C. 406(e)) was too restrictive since it allowed advance return of dependents at Government expense only in unusual or emergency circumstances. This did not include situations such as serious illness of a close relative or personal, financial or marital problems. However, the Congress did not authorize the Government to pay for one-way or round-trip travel of dependents to the United States in emergency leave situations when the dependents intended to return to the overseas station. In such situations only Government furnished transportation may be provided. Under current regulations reimbursement for advance return is denied if the service member is not able to decide before departure on emergency leave that his dependents will not return to the overseas station. This is in keeping with the general rule that travel by members of the uniformed services and their dependents at Government expense required advance approval. However, in view of the unique circumstances under which travel is to be performed under 37 U.S.C. § 406(h), and the lack of evidence that Congress intended an

B-195708

inflexible advance approval requirement to be imposed it is our view that in the absence of a regulation to the contrary such travel need not be approved in advance but could be approved by the appropriate officials after the travel has been performed. In this regard, we have today asked the Per Diem, Travel and Transportation Allowance Committee of the Department of Defense to review these regulations with a view to initiating changes which would permit travel at Government expense in future cases of this nature. A copy of our letter is enclosed.

We regret a reply more favorable to your constituent was not possible.

Sincerely yours,

MILTON SOCOLAR

For the Comptroller General
of the United States

Enclosure