

DECISION



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

51062

FILE: B-183025

DATE: SEP 26 1975

MATTER OF: Leave travel entitlements of military members assigned consecutive overseas tours

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- DIGEST:**
1. Proposed revision of Volume 1 of the Joint Travel Regulations granting leave travel entitlements authorized under 37 U.S.C. § 411b (Supp. III, 1973), to members reassigned to second tours of duty at same overseas station is contrary to clear language of statutory provision which provides for this entitlement in connection with a "change of permanent station to another duty station."
 2. There is no objection to a proposed revision of Volume 1 of the Joint Travel Regulations to grant leave entitlements under 37 U.S.C. § 411b, where because of the critical nature of the member's job he is not authorized leave travel between permanent station assignments provided such travel takes place within a reasonable time following the change of station, and entitlements do not exceed those provided if travel had occurred between assignments.

This action is in response to a request by the Assistant Secretary of the Navy (Manpower and Reserve Affairs) for a decision as to whether it is legally permissible to amend Volume 1 of the Joint Travel Regulations to authorize travel and transportation allowances in the instances described below. The letter was forwarded to our Office by the Per Diem, Travel and Transportation Allowance Committee, and has been assigned PDTATAC Control No. 74-45.

The submission indicates that paragraphs M5500 and M5501 of Volume 1 of the Joint Travel Regulations implement new leave travel entitlements authorized by 37 U.S.C. § 411b (Supp. III, 1973), which provides as follows:

"(a) Under uniform regulations prescribed by the Secretaries concerned, a member of a uniformed service stationed outside the forty-eight contiguous States and the District of Columbia, who is ordered to make a change of permanent station to another duty station outside the forty-eight contiguous States and the District of Columbia may be paid travel and transportation allowances in connection with authorized leave from his last duty station to a place approved by the Secretary concerned, or his designee, or to a place no farther distant than his home of record if he is a member without dependents, and from that place to his designated post of duty, if either his last duty station or his designated post of duty is a restricted area in which dependents are not authorized.

"(b) The allowances prescribed under this section may not exceed the rate authorized under section 404(d) of this title. Authorized travel under this section is performed in a duty status."

The current regulations, cited above, do not authorize leave travel when members are assigned to a second tour of duty at the same overseas station, one of the assignments being to an "all others tour." Although there is no permanent change of station in connection with such a reassignment it is suggested that the member should be entitled to leave travel between his two assignments to the same extent as a member who makes an actual permanent change of station, since both have the same need for family relocation or visitation with family or relatives. Further it is indicated that members serving consecutive terms at the same location do so to the Government's advantage and should not be denied entitlement because of what is referred to as "the technical definition of permanent change of station contained in the Joint Travel Regulations."

Although those considerations support the reasonableness of providing leave travel allowances for members serving consecutive tours at the same duty station, the language of section 41b clearly limits the entitlement to members who are "ordered to make a change of permanent station to another duty station," (emphasis supplied). As a general rule of statutory construction, words and phrases of a statute should be given their plain, ordinary and

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usual meaning unless persuasive evidence indicates that a different meaning was intended. Banks v. Chicago Grain Trimmers, 390 U.S. 459, 465 (1968); Crane v. Commissioner, 331 U.S. 1, 6 (1947).

Although we consider that the words of 37 U.S.C. § 411b clearly preclude the extension of this entitlement as suggested in the submission, we have reviewed the legislative history of that provision and have found no expression of congressional intent to authorize leave travel in those circumstances. Consequently, we find no statutory authority for revising Volume 1 of the Joint Travel Regulations to provide leave travel entitlements to members incident to consecutive assignments to the same overseas duty station.

It is also indicated in the submission that current regulations do not provide leave travel entitlements to a member reassigned on a permanent change of station between overseas duty stations who would normally qualify for those entitlements, but who, because of the critical nature of his job, was not authorized such leave travel incident to the change of official station travel. It is suggested that such a member should have a "saved entitlement" to leave travel that he could use at the first available time he could be spared from his new job and authorized leave. It is indicated that since the member would otherwise qualify for the leave travel, he should not be denied that entitlement because the needs of his service precluded his taking leave in connection with the permanent change of station.

Although the wording of the statute in question clearly contemplates that the leave travel authorized thereby will be performed incident to the authorized change of station, the language used does not clearly preclude the authorization of leave travel at another time. A review of the legislative history reveals no expression of a specific congressional intent with respect to the time at which leave travel will be performed although it is clearly contemplated that under normal circumstances leave will be taken between tours of duty and the authorized travel performed at that time. S. Rep. No. 497, 93d Cong., 1st Sess. 2 (1973). It is equally clear that there existed a congressional concern that the entitlement created by section 411b be carefully limited to bona fide travel for family relocation or visitation. Congress expected that regulations implementing this enactment would stringently prevent deviation from this objective. S. Rep. No. 497, supra.

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Since the statutory language in question does not specifically prohibit the delay of leave travel until after the change of station has taken place, it is our view that Volume 1 of the Joint Travel Regulations may be revised to permit a member who is not authorized leave between overseas assignments because of the critical nature of his job, to receive section 411b entitlements when leave is subsequently authorized. However, any implementing regulations should clearly limit leave travel entitlements to instances in which denial of authorized leave between duty stations was required by the needs of the member's service. Furthermore, such regulations should provide that authorized leave must be taken within a reasonable time following reassignment to ensure that the purposes of section 411b are properly observed.

It should be recognized, however, that the statutory entitlements of section 411b may not be enlarged by the proposed revision of Volume 1 of the Joint Travel Regulations. Section 411b authorizes a limited travel and transportation allowance whose maximum under the statute is the cost of travel from the member's last duty station to a place no further distant than his home of record or to a place approved by the Secretary concerned, or his designee, and from there to his new duty station. The proposed regulations must recognize this limitation even though in some instances, such as where a member's new duty station is farther from his home of record than his old duty station, the allowance may not be sufficient to pay for the full cost of his travel.

Consequently, Volume 1 of the Joint Travel Regulations may be revised as indicated above. However, regulations to be promulgated to provide for leave travel under these circumstances would provide an additional entitlement not authorized by current regulations. Although we view that entitlement as within the scope of the authorizing statute, since it has not previously been provided for by regulations, it would be prospective only.

The questions submitted are answered accordingly.

R. F. KELLEN

Deputy

Comptroller General
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