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**DECISION**



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

FILE: B-190340

DATE: February 8, 1978

MATTER OF: Transportation allowances  
incident to sea duty

DIGEST: When a member of the uniformed services is assigned on a permanent change of station to sea duty and the duty is determined by the Secretary concerned as being unusually arduous (absent from the home port for long periods totaling more than 50 percent of the time), regulations may be amended to authorize transportation at Government expense of dependents, baggage and household effects to and from a designated place even though the location of the home port or shore station are the same, since such duty is considered sea duty under unusual circumstances as provided for in 37 U.S.C. 406(e) (1970). 43 Comp. Gen. 639 (1964) modified.

This action is in response to a letter dated May 27, 1977, from the Acting Assistant Secretary of the Air Force (Manpower and Reserve Affairs) requesting a decision as to whether Volume 1 of the Joint Travel Regulations (1 JTR) may be amended to authorize the movement of member's dependents and baggage and household effects under the unusual or emergency circumstances addressed in 37 U.S.C. 406(e) (1970) in the circumstances described. The request was forwarded to this Office by the Per Diem, Travel and Transportation Allowance Committee (1DTATAC Control Number 77-15).

The primary issue in this case is whether an assignment to certain "unusually arduous" sea duty may be considered as an assignment to serve under "unusual circumstances" as provided for in 37 U.S.C. 406(e), and thus entitle the member to transportation of dependents and household goods to a designated location at Government expense even though the home port of the member's ship remains unchanged or is the same as his previous shore station. An affirmative answer would also permit travel and transportation from the designated location to the member's new duty station or the home port of his ship when he is reassigned to duty not involving such arduous circumstances.

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The submission cites our decision B-185099, June 1, 1976, in which the long held position of this Office was followed that no authority exists under present law which would permit transportation of dependents and household goods at Government expense incident to a member's permanent change of station (PCS) where the member was transferred from sea duty to shore duty with the home port and home yard of the vessel being at the same location as the shore duty station. See also 43 Comp. Gen. 639 (1964) to the same effect concerning a transfer from sea duty to sea duty without a change of home port or yard. The basis for that rule is that generally under 37 U.S.C. 406 the entitlement to transportation of household goods and dependents is limited to the distance between the old and the new duty station, and in such a case there is no change in duty station for purposes of such transportation. 37 U.S.C. 411(d) (1970) and 1 JTR, Appendix J (permanent station).

The submission indicates that it is not contested that, except for the types of cases discussed in 45 Comp. Gen. 159 (1965), there is nothing "unusual or emergent" concerning normal duty with afloat units which would purport to authorize movement of dependents for distances greater than between the former duty station and the home port of the vessel. However, because of the nature of some current missions of ships of the Navy which are described as involving unusually arduous duty in that the ships are deployed away from the home port for the majority of the time, it is asked, in effect, whether upon assignment to such duty the member may be considered assigned to sea duty under the unusual circumstances addressed in 37 U.S.C. 406(e), and thus entitle the member to transportation of dependents and household goods to a designated location at Government expense. In this regard it is proposed to amend 1 JTR to--

"\* \* \* authorize the transportation of dependent and household goods to the places authorized in par. M7005-2 and 3 whenever a member is assigned by permanent change of station orders for a period contemplated to be for 2 years or more with an afloat unit specified in writing by the Secretary of the Service concerned, or his designated representative, as involving unusually arduous duty and the projected absences of the unit from its assigned home port are for more than 50% of the time. Further relocation of

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dependents in such cases will not be authorized until the member is again assigned by permanent change of station orders to an unrestricted station or to an afloat unit not also specified as unusually arduous duty involving absences from the home port for more than 50% of the time. Movement in these cases would be authorized even though the home port of the specified afloat unit and the new station or the home port of the new ship or unit is located at the same place."

Section 406(e) of title 37, United States Code, provides that when orders directing a PCS for the member concerned have not been issued, or when they have been issued but cannot be used as authority for the transportation of his dependents, baggage and household effects, the Secretaries concerned may authorize the movement of the dependents, baggage and household effects and prescribe transportation in kind, reimbursement therefor, or a monetary allowance in place thereof, in cases involving unusual or emergency circumstances including those in which the member is serving on permanent duty at stations outside the United States, in Hawaii or Alaska, or on sea duty.

Section 406(e) was derived without substantive change from section 303(c) of the Career Compensation Act of 1949, ch. 681, 63 Stat. 814. While the emphasis of the statutory provision is upon the advance return of dependents from overseas, the legislative history of the law also indicates an intent to provide authority for movement of dependents and household effects between points in the United States incident to unusual or emergency situations when the member is on sea duty. In S. Rept. No. 733, on H.R. 5007, 81st Cong., 1st Sess. (which became the Career Compensation Act of 1949), on page 22, the Senate Committee on Armed Services, referring to section 303(c) stated in pertinent part as follows:

"This subsection also includes provisions for the transportation of dependents even though there is involved no change of station in order that dependents may travel at Government expense between points in the United States where the service member is on sea duty or on duty outside the United

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States at a post of duty where dependents are not permitted to accompany him. \* \* \*" (Emphasis added.)

Reportedly, because of the nature of the mission of certain Navy vessels, members assigned thereto are required to be separated from their families for long periods of time and, while the vessel may not be deployed for a full year, its deployment from the home port is such that it is absent for long periods totaling more than 50 percent of the time. In such circumstances the members assigned to such units would be in a situation similar to that described in 45 Comp. Gen. 159, 162, supra, wherein we stated:

"Normally, a member assigned to a vessel will desire to have his dependents reside at or near the home port or home yard to which his ship will return at frequent or regular intervals. In the case, however, of a vessel which is scheduled to be away from its home port or home yard for prolonged periods there would appear to be no reason for dependents to maintain a residence at the home port or home yard. In such a situation the home port or home yard is no longer serving its purpose. \* \* \*"

In that case we authorized amendment of the regulations to authorize transportation of dependents and household effects to a designated location when the member was assigned to certain ships and staffs deployed away from their home ports and yards for at least a year to areas where dependents were not permitted. While the situation in this case is not as pronounced as that in 45 Comp. Gen. 159, reportedly deployment of vessels for a majority of the time that a member is assigned for duty has presented serious morale problems for the members and their dependents in certain situations where they do not have friends or relatives at the home port. Also, apparently it is different from the ordinary sort of duty assignment most members of the services receive.

Therefore, it is our view that the arduous sort of duty assignments described in the submission may be regarded as falling within the unusual circumstances contemplated by 37 U.S.C. 406(e). In that connection we note that 43 Comp. Gen. 639, supra, involved a situation in which the member was transferred from sea duty

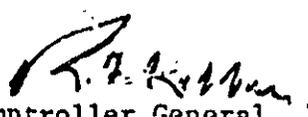
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during which he was scheduled to be away from the home port or home yard "the major portion of the sea duty assignment," to a tour of sea duty during which he would return to the home port or home yard at frequent or regular intervals. We were asked whether regulations could be issued to permit transportation at Government expense of the member's dependents and household goods to a designated location in connection with the first assignment and to the home port in connection with the second assignment. We concluded that the issuance of such regulations was not authorized. To the extent that the factual situation contemplated in that submission was similar to the facts given in this case, 43 Comp. Gen. 639, supra, is modified.

For the reasons stated we believe that the Secretary has authority to amend the regulations along the lines proposed. However, we believe the regulations as amended should include a requirement that deployment of the vessel must be for long periods of time in order for the duty to be determined arduous and thus unusual under 37 U.S.C. 406(e). Such a requirement would be for the purpose of preventing such determinations when vessels are deployed for short periods allowing the members attached thereto to return to the home port frequently. We are particularly concerned that such restriction be incorporated in the regulations in view of the fact that deployment must be for only "more than 50 percent of the time." Without involvement of extended periods of deployment the assignment to sea duty would not be considered unusual in terms of 37 U.S.C. 406(e).

As indicated in the proposed amendment, the authorization of dependent travel and household goods transportation to a designated location upon assignment to a tour of duty covered by that paragraph also involves such travel and transportation from the designated location when such assignment is terminated and the member is assigned to duty not involving the type of duty contemplated therein.

Deputy

  
Comptroller General  
of the United States