

Schneider

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DECISION



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

FILE: B-200099

DATE: January 6, 1981

MATTER OF: Overland transportation of privately owned vehicles

DIGEST: Pursuant to 37 U.S.C. § 554, members of the uniformed services who incur an injury or become ill while "on active duty" and extended hospitalization is required, are entitled to the transportation of ~~one~~ privately owned motor vehicle. However, since the statutory language and legislative history clearly indicate an intent to limit the entitlement to members on active duty, the Joint Travel Regulations may not be amended to include those persons whose retirement or separation from the uniformed services is caused by illness or injury since they are then not on active duty.

Entitlement to

This action is in response to a letter of August 14, 1980, from the Assistant Secretary of the Navy (Manpower, Reserve Affairs and Logistics) requesting a decision as to whether Volume 1 of the Joint Travel Regulation (1 JTR), paragraph M11005-1, may be amended to authorize the transportation (including overland) of privately owned motor vehicles belonging to members of the uniformed service who retire or are separated from the Service as a direct result of illness or injury. The request has been assigned Control No. 80-27 by the Per Diem, Travel and Transportation Allowance Committee.

The Assistant Secretary points out that under the current provisions of 1 JTR, paragraph M11005-1, (when a member on active duty is officially reported as dead, injured, ill, or absent for a period of more than 29 days in a missing status, the member's privately owned motor vehicle may be shipped at Government expense, including overland transportation. The vehicle may be shipped to the member's home of record, to the residence of the member's dependents, next of kin, or other person entitled to receive custody of the member's effects, or to such other place as may be determined in accordance with service regulations. If the member is reported injured or ill, the transportation provided under this paragraph is authorized only when the anticipated period of hospitalization or treatment is expected to be of prolonged duration as shown by a statement of the commanding officer at the receiving hospital.) This paragraph is based on provisions

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of the Missing Persons Act now codified at 37 U.S.C. § 554 (1980).

The Assistant Secretary indicates that cases have arisen where a member who met the qualifications outlined above has been (1) released from the hospital to which admitted after being officially reported as ill or injured; or (2) separated from the service and placed on the temporary disability retired list; or (3) sent home for treatment in a Veterans' Administration hospital. In any of those cases there is a good possibility that the member concerned is no longer on active duty but is not physically able to drive an automobile on leaving the hospital. For that reason the question is asked whether the regulations may be amended to authorize the shipment of such a member's vehicle when the separation or retirement is directly related to the illness or injury, although the member is not then on active duty.

Section 554 of title 37, United States Code, provides in pertinent part:

"(a) In this section, 'household and personal effects' and 'household effects' may include, in addition to other authorized weight allowances, one privately owned motor vehicle which may be shipped at United States expense. * * *

* * * * *

"(b) Transportation * * * may be provided for the dependents and household and personal effects of a member of a uniformed service on active duty * * * who is officially reported as dead, injured, ill, or absent for a period of more than 29 days in a missing status—

"(1) to the member's official residence of record;

"(2) to the residence of his dependent, next of kin, or other person entitled to custody of the effects, under regulations prescribed by the Secretary concerned; or

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"(3) on request of the member (if injured or ill), or his dependent, next of kin, or other person described in clause (2), to another location determined in advance or later approved by the Secretary concerned, or his designee.

* * * * *

"(c) When a member described in subsection (b) of this section is in an injured or ill status, transportation of dependents and household and personal effects authorized by this section may be provided only when prolonged hospitalization or treatment is anticipated." (Emphasis added.)

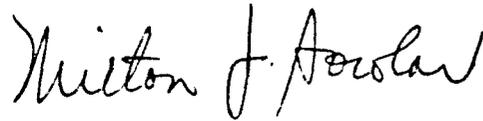
The provisions of 1 JTR, para. M11005-1 substantially mirror the language of the above statute which it implements, and currently does not entitle non-active duty personnel to its benefits. The clear language of 37 U.S.C. § 554 does not authorize the proposed amendment to the regulations which would include persons other than members on active duty.

It is well established that where a statute is unambiguous and the directions specific, its plain meaning may not be altered or extended by administrative regulations, nor may the regulations attempt to add to the statute something which is not there. See 56 Comp. Gen. 943, 949 (1977), and cases cited therein. The statutory provisions of 37 U.S.C. § 554 are clearly stated so as to apply only to a member of a uniformed service on active duty. The statute does not extend entitlement to any member whose active duty status has terminated.

The legislative history of the statute also supports this conclusion. Originally enacted as section 12 of the Missing Persons Act in 1942, 50 U.S.C. App. 1012 (1940 ed. Supp. II), the law was intended as a temporary wartime measure to protect the financial interests of persons captured or in a missing status. After several reenactments, the Act was made permanent by Public Law 85-217, August 29, 1957, 71 Stat. 491, which, like all subsequent amendments, specifically refers only to members on active duty. While the history of 37 U.S.C. § 554 reflects an expansion of the classes of persons to whom the travel entitlements would be granted, at all times the active duty limitation was retained.

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Accordingly, in light of the unequivocal language of section 554 and of its history, the proposed regulatory amendment, which would include members who have been retired or separated because of injury or illness is not authorized without additional statutory authority. Of course such members are entitled to the more limited benefits provided under 37 U.S.C. § 406 (1980) to members being separated or retired.

A handwritten signature in cursive script, reading "Milton J. Aorolan".

For the Comptroller General
of the United States