

DECISION

17827
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

McConnell

FILE: B-201887

DATE: April 21, 1981

MATTER OF: Captain Philip W. Holden, USA

DIGEST: An Army member claims entitlement to Family Separation Allowances type I and type II, on the basis that he was separated from his minor child due to orders assigning him to his new permanent duty station in Germany to which his dependent was not authorized concurrent transportation. The member seeks to establish dependency as of the date he arrived at his new duty station when apparently the child previously had been considered the dependent of his wife, also a member of the Army. The member's orders show that a dependent's concurrent travel may well have been authorized had the member clarified the dependency and pursued travel authorization and, as a matter of fact, a few months later the dependent traveled with the member's wife to Germany upon her assignment there. In these circumstances, the separation between the member and his dependent may not be considered as enforced so as to authorize payment of the Family Separation Allowances.

Captain Philip W. Holden, USA, appeals the denial by our Claims Division of his claim for Family Separation Allowances (FSA), type I and type II. We affirm the disallowance of Captain Holden's claim for the reasons discussed below.

While stationed at the United States Army Field Artillery Center, Fort Sill, Oklahoma, Captain Holden received orders dated October 5, 1977, assigning him permanently to the 21st Replacement Battalion in Germany. Captain Holden lived at the Fort Sill facility with his wife, Captain Doris F. Holden, who was also assigned to Fort Sill, and their daughter, Vanessa, born on November 11, 1976. Those orders established his reporting date in Germany as February 15, 1978, and noted, among other things not relevant here, that he had been accorded dependent travel Code E which meant that his dependent was entitled to travel with him but

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only after he submitted an application for such travel to his installation commander and approval was obtained from the overseas commander. Captain Philip Holden's orders were amended on February 3, 1978, to state that he was being assigned to Headquarters and Headquarters V Corps, Germany.

Captain Philip Holden arrived at his new permanent duty station on February 13, 1978. He applied for two-bedroom base housing upon his arrival but, he states, the Housing Referral Office informed him that the waiting period for two bedroom quarters was 34 weeks. Captain Holden then requested permission on February 17, 1978, to rent off-post housing and the Housing Referral Office approved his request on that same date.

Thereafter, Captain Doris Holden received orders, dated February 28, 1978, assigning her permanently on August 1, 1978, to the 97th General Hospital in Germany. Her original orders noted that a dependent travel code was not applicable. However, those orders were amended on April 20, 1978, to state that "(1) Concurrent travel is approved for the following dependent: VANESSA L./Dau/21 Nov 76." In addition, the amended orders contained specific directives relating to the completion of sufficient service on overseas tour for entitlement to concurrent travel, quarters, dependent baggage limit, and family housing items in short supply.

On March 28, 1978, Captain Philip Holden submitted AE Form 325 (Request for Movement of Dependents to US Army, Europe) seeking authorization for travel of his daughter as his dependent. The claimant's AE Form 325 listed the date of his daughter's availability to travel as February 13, 1978. However, no action was taken on the claimant's request because the dependent daughter traveled to Germany under her mother's permanent change-of-station orders.

Captain Holden signed a lease for off-post economy quarters on April 11, 1978, and took occupancy on June 1, 1978. His wife and daughter arrived in Germany on June 29, 1978.

At some point after February 13, 1978, Captain Doris Holden executed a letter of authorization stating that her husband provided the support for their daughter and that the daughter

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should be listed as her husband's dependent as of February 13, 1978.

Captain Holden claims entitlement to FSA, type II, from February 13 to June 29, 1978, and FSA, type I, from June 1 to June 29, 1978. He asserts that, as of February 13, 1978, the date his daughter allegedly became his dependent, his daughter was not authorized to follow him to Germany due to a lack of adequate quarters at his new duty station. He adds that officials at Fort Sill told him prior to his departure that concurrent travel was not being authorized to personnel assigned to his new duty station.

Section 427, title 37 of the United States Code (1976), establishes entitlement to FSA for members of the uniformed services. Subsection (a) provides that a member with dependents who is permanently stationed outside the United States is entitled to a monthly allowance equal to basic allowance for quarters at the without dependents rate if, among other conditions not relevant here, the movement of the member's dependents to his permanent station is not authorized at the expense of the Government under section 406 of title 37. Subsection (b) establishes a monthly allowance equal to \$30 for members with dependents who are entitled to a basic allowance for quarters if, among other conditions not relevant here, movement of the dependents to the permanent station is not authorized at Government expense under section 406 of title 37. The Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), chapter 3, sets forth regulations applicable to these allowances and denominates them respectively, FSA, type I, and FSA, type II.

Section 406, title 37, of the United States Code (1976), and implementing provisions of the Joint Travel Regulations, establish entitlement of members to have their dependents travel at the Government's expense. Specifically for the purposes of this case, paragraph M7000-10 of the Joint Travel Regulations provided as follows:

"Members of the Uniformed Services are entitled to transportation of dependents at Government expense upon a permanent change of station * * * for travel performed from the old station to the new permanent station * * * except:

"10. when dependency does not exist on the effective date of the order directing permanent change of station * * *."

1 JTR para. M7000-10 (change 298, December 1, 1977).

Captain Holden asserts that his daughter was not his dependent prior to the date he arrived at his new duty station (apparently she was then being claimed as his wife's dependent). Thus, she was not his dependent on the effective date of his orders, which is the date he commenced travel. However, his orders, dated October 5, 1977, and amended February 3, 1978, note that he was assigned a dependent travel Code E. As was stated above, Code E indicates that the overseas commander will authorize concurrent travel for a long tour of duty if the member follows certain procedures. Army Regulation 55-46 para. 3-2a (October 6, 1975). Paragraphs 3-1b and 3-1c of Army Regulation 55-46 set forth those procedures a member must follow in order to obtain authorization for concurrent travel of dependents. Army Regulation 55-46 paras. 3-1b and 3-1c (October 6, 1975).

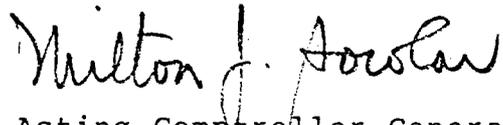
While not made explicit under 37 U.S.C. § 427 or in the above-cited Army regulations, there is an implied duty upon the member to pursue authorization of concurrent travel of dependents through the proper procedures. 43 Comp. Gen. 547 (1964); B-158950, June 28, 1966. Members who do not seek authorization for concurrent travel of dependents when the opportunity is provided are not thereafter entitled to FSA. 43 Comp. Gen. 547.

The record indicates that Captain Holden did not pursue authorization for the concurrent travel of his daughter. However, Captain Holden asserts that he did not seek authorization because his daughter was not his dependent at the time his orders were issued. We note, however, that Captain Holden's orders specify that his dependent was entitled to concurrent travel with him to his new duty station. It was incumbent upon him at the time his orders were issued to clarify the dependency status of his daughter and to request her concurrent transportation if he wished to take her with him to Germany under his orders. He did not do so.

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Instead, the child remained with her mother for a few more months at Fort Sill and then traveled with her to Germany at Government expense. In these circumstances we do not believe there was the enforced separation of the dependent from her father necessary for entitlement to FSA.

We affirm the disallowance of Captain Holden's claim.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States