

DECISION



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

30567

FILE: 3-217025

DATE: March 4, 1985

MATTER OF: Student-Dependents of Government Personnel
Stationed Overseas--Baggage Shipments

DIGEST:

1. Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. The construction of a statute as expressed in implementing regulations by those charged with its execution, however, is to be sustained in the absence of plain error, particularly when the regulations have been long followed and consistently applied with Congressional assent. Hence, regulations of the Secretary of State in effect since 1960 authorizing shipments of unaccompanied baggage for the student-dependents of Federal civilian employees stationed overseas on occasions when those dependents travel to and from schools located in the United States, issued under a statute broadly authorizing reimbursement of their "travel expenses," are upheld as valid.
2. A statute enacted in 1983 provides that under regulations prescribed by the Secretary of Defense, members of the uniformed services stationed overseas may be paid a "transportation allowance" for their dependent children who attend school in the United States. The legislative history reflects that Congress intended to provide service members with benefits similar to those authorized by a law enacted in 1960 to cover the "travel expenses" of the student-dependents of civilian employees stationed overseas. Regulations of the Secretary of State under the 1960 enactment properly include provision for unaccompanied personal baggage shipments, so that there is no objection to a similar provision

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adopted through regulation by the Secretary of Defense under the 1983 enactment, since related statutes should be construed together in a consistent manner.

The Secretary of Defense and the Secretary of State have issued regulations authorizing shipments of unaccompanied baggage for the student-dependents of Government personnel stationed overseas on occasions when those dependents travel to and from schools located in the United States. The question presented here is whether those regulations are without a statutory basis and invalid.^{1/} We conclude that the regulations are valid under the governing provisions of statute.

Background

Section 430 of title 37, United States Code, provides that under regulations to be prescribed by the Secretary of Defense, a member of a uniformed service who is assigned a permanent duty station outside the United States--

"* * * may be paid a transportation allowance for each unmarried dependent child, who is under 23 years of age and is attending a school in the United States for the purpose of obtaining a secondary or undergraduate college education, of one annual trip between the school being attended and the member's duty station in the oversea area and return.
* * *"

This provision was added to the United States Code by a law enacted in 1983.^{2/} The Congressional reports relating to that enactment contain these remarks concerning its purpose:

^{1/} This action is in response to a request for a decision received from the Chairman of the Per Diem, Travel and Transportation Allowance Committee (PDTATAC/68/0423D).

^{2/} Section 910 of the Department of Defense Authorization Act, 1984, Public Law 98-94, approved September 24, 1983, 97 Stat. 614, 638-639.

"Foreign Service personnel and civilian employees of the federal government who serve overseas are currently authorized reimbursement for one round trip annually for their children who attend college in the United States. No such authority exists to reimburse military personnel stationed overseas for similar travel by their dependents.

"In order to eliminate this disparity, the Committee recommends that military personnel serving overseas be reimbursed for the annual round trip transportation of their dependents to attend school in the United States. * * *"3/

Statutory authority for the annual round-trip transportation of the children of Foreign Service personnel and civilian employees stationed overseas had been enacted earlier in 1960, in a law providing for the payment of "[t]he travel expenses of dependents of an employee to and from a school in the United States to obtain an American secondary or undergraduate college education."4/ Implementing regulations issued by the Secretary of State since 1960 have included "expenses for transportation of unaccompanied personal baggage" as a reimbursable item.5/

3/ S. REP. NO. 174, 98th Cong., 1st Sess. 223, reprinted in 1983 U.S. CODE CONG. & AD. NEWS 1081, 1113. See also H.R. REP. NO. 352 (CONF.), 98th Cong. 1st Sess. 225, reprinted in 1983 U.S. CODE CONG. & AD. NEWS 1160, 1162; S. REP. NO. 213 (CONF.), 98th Cong., 1st Sess. 225 (1983); and H.R. REP. NO. 107, 98th Cong., 1st Sess. 211 (1983).

4/ Subsection 221(4)(B) of the Overseas Differentials and Allowances Act, Public Law 86-707, approved September 6, 1960, 74 Stat. 792, 794. This subsection, as amended, is currently codified in 5 U.S.C. § 5924(4)(B).

5/ See section 285, Standardized Regulations (Government Civilians, Foreign Areas); Transmittal Letter SR-368, dated September 4, 1983 (current); and Transmittal Letter SR-104, dated April 2, 1961 (superseded).

After 37 U.S.C. § 430 was enacted into law in 1983, the responsible officials of the uniformed services apparently determined that it would be appropriate to prescribe a similar authorization by regulation for the shipment of unaccompanied baggage for the children of service members stationed overseas. Consequently, when Volume 1 of the Joint Travel Regulations was amended to implement 37 U.S.C. § 430, the following new paragraph was included in the amendment:

***M7353 UNACCOMPANIED BAGGAGE**

"Unaccompanied baggage, not to exceed 225 pounds (gross), may be transported at Government expense in connection with each trip authorized between the school and the member's duty station under this Part."
(Change 372, 1 JTR, February 1, 1984)

Issues Presented

Questions have recently been raised by officials of one of the military departments concerning the validity of the regulations authorizing baggage shipments for the student-dependents of Federal personnel stationed overseas when those students travel to and from schools located in the United States. In a memorandum accompanying the request for a decision in this matter, they note that 37 U.S.C. § 430, and the statute enacted earlier in 1960 to provide for the "travel expenses" of civilian employees' children, contain no specific and separate authorization for the transportation of a student's unaccompanied baggage. It is further noted that the baggage shipments at issue are not authorized under those provisions of statute contained elsewhere in the United States Code which prescribe specific rules concerning the transportation of baggage and household goods for Government personnel.^{6/} It is therefore suggested that the regulations in question may lack a statutory basis and may thus be invalid.

^{6/} With specific reference to 37 U.S.C. § 406, 5 U.S.C. §§ 5722-5729, and 5 U.S.C. § 5742.

Analysis and Conclusion

It is fundamental that Federal agencies and officials must act within the authority granted to them by statute in issuing regulations.^{7/} It is equally fundamental, however, that regulations are deemed to be within an agency's statutory authority and consistent with Congressional intent unless shown to be arbitrary or contrary to the statutory purpose.^{8/} It is a settled rule of statutory construction that the interpretation of a provision of statute, as expressed in implementing regulations by those charged with the execution of the statute, is to be sustained in the absence of any showing of plain error, particularly when the regulations have been long followed and consistently applied, and the Congress has declined to alter the administrative interpretation in later amendments to the statute.^{9/}

Regarding the question raised in the present matter about the validity of the regulations issued by the Secretary of State which provide for unaccompanied personal baggage shipments under the statute enacted in 1960, we note that a version of the statute as initially passed by the House of Representatives would have limited reimbursement to "the cost of transporting dependents." When the proposed legislation was subsequently considered in the Senate, concern was expressed that this term might be construed to "prevent payment of more than the actual air or ship fare." The term "travel expenses" was consequently substituted in the Senate version with the intent of

^{7/} See, for example, 56 Comp. Gen. 943, 949 (1977); 53 Comp. Gen. 547 (1974); and 52 Comp. Gen. 769 (1973).

^{8/} See, generally, 58 Comp. Gen. 635, 637-638 (1979); and 42 Comp. Gen. 27 (1962).

^{9/} Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969); Udall v. Tallman, 380 U.S. 1, 16-17 (1965); 58 Comp. Gen. at 638; 49 Comp. Gen. 510, 516-517 (1970); 48 Comp. Gen. 5, 9 (1968); 2A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 49.05 (4th ed. C.D. Sands 1973).

"authorizing the usual expenses of transportation, per diem, and related costs."^{10/} This substitution was then adopted by the Congress as a whole and enacted into law.

Thus, while the 1960 legislation authorizing payment of the "travel expenses" of the student-dependents of civilian employees overseas does not specifically refer to shipments of unaccompanied baggage, the legislative history of the statute reflects that the Congress intended to authorize reimbursement of not only the fares of personal travel but also other usual transportation expenses and related costs associated with annual travel by students to and from schools. This statutory authorization has consistently been construed in the implementing regulations during the past 25 years to include authority for a shipment of unaccompanied personal baggage, and the Congress has not disturbed this administrative construction placed on the original legislation in later amendments to the statute.^{11/} In these circumstances, we are unable to conclude that the regulations in question which have been issued by the Secretary of State are contrary to the statutory purpose or lack a statutory basis.

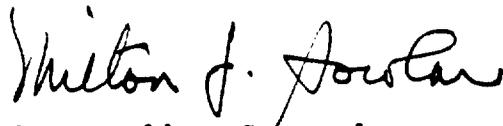
As to the validity of paragraph M7353 of the Joint Travel Regulations, the governing provisions of statute contained in 37 U.S.C. § 430 authorize members of the uniformed services stationed overseas to be paid a "transportation allowance" for an "annual trip" of their dependent children who are attending a school in the United States. Although the statute does not specifically list the trip or transportation expenses to be covered by the allowance, as indicated, the Congress intended that the legislation be applied to provide service members with

^{10/} See S. REP. NO. 1647, 86th Cong., 2d Sess. 7-8, reprinted in 1960 U.S. CODE CONG. & AD. NEWS 3338, 3344-3345.

^{11/} See, e.g., the amendment of 5 U.S.C. § 5924(4)(B) by Public Law 96-465, § 2308, October 17, 1980, 94 Stat. 2165; Public Law 96-132, § 4(h), November 30, 1979; 93 Stat. 1045; and Public Law 93-475, § 13, October 26, 1974, 88 Stat. 1443.

benefits similar to those previously granted to civilian employees in 1960. Consequently, our view is that the 1983 and 1960 enactments are related and are to be construed consistently together.^{12/} While the language of neither statute is as clear in this regard as it might be, since it is our view that the civilian statute may properly be construed to include the transportation of unaccompanied personal baggage, we do not object to regulations providing a similar benefit for service members as part of the "transportation allowance" authorized under 37 U.S.C. § 430. Hence, we find that there is a statutory basis for paragraph M7353 of the Joint Travel Regulations and that the paragraph furthers the legislative purpose of 37 U.S.C. § 430.

Accordingly, we conclude that the regulations brought into question in this matter are valid.

for 
Comptroller General
of the United States

^{12/} That is, we consider the statutes in pari materia.
See 2A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION
§§ 51.01-51.03 (4th ed. C.D. Sands 1973).