

DECISION

[DE]

THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D.C. 20548

*54 Comp Gen 1042 and 53 id 963
distinguished*

FILE:

DATE:

JUL 28 1976

MATTER OF: **B-165476**

[REDACTED], USAF, Retired

DIGEST:

1. Retired service member did not qualify for a travel allowance under regulations authorizing travel to home of selection within 1 year of retirement in 1958 since although he visited his eventual retirement home site in the year following his retirement, he did not establish a home there within the 1-year period, but instead lived elsewhere for 4 years.
2. Retired service member did not qualify for a travel allowance under regulations authorizing travel to home of record upon retirement in 1958 under new rule in 53 Comp. Gen. 963 (1974) since that decision is to be given prospective effect only (54 Comp. Gen. 1042 (1975)) and his claim accrued prior to its effective date. Also, there is no showing he actually traveled to his home of record upon his retirement nor does he claim travel allowances to that place.

This action is in response to a letter dated February 9, 1975,
with enclosures, from [REDACTED] USAF, Retired,

[REDACTED] to the Air Force Accounting and Finance Center, Denver, Colorado,
in effect requesting reconsideration of the denial by this Office of his
claim for a travel allowance for travel performed from Bolling Air
Force Base, Washington, D.C., to Los Gatos, California, following
his retirement from military service in 1958. [REDACTED]
letter was forwarded to this Office by Air Force Accounting and Finance
Center transmittal dated September 17, 1975.

The record indicates that the member retired from the United
States Air Force on May 2, 1958, at Bolling Air Force Base, Washing-
ton, D.C. In January 1959 he filed a claim for travel allowance for
travel performed during the period January 3 to 6, 1959, from Washing-
ton, D.C., to Miami, Florida, as his home of selection on retirement.

ran

B-165478

The Air Force denied payment of the claim for the reason that he had not established a residence in Miami.

In letter dated April 23, 1967, over 8 years after he had made his original claim, [REDACTED] advised the Air Force Finance Center, Denver, Colorado, that he had traveled to California upon retirement and then visited Florida. He said he claimed Florida as that was the last place he visited. Subsequently, he changed his claim for travel to a home of selection from Florida to California, stating that he had traveled to California in 1958 and then to Florida. He also stated that for 6 months following his retirement he traveled to various cities looking for a suitable home for retirement.

The 1967 claim for travel to Los Gatos was disallowed by settlement of this Office dated October 4, 1967, for the reason that the record does not establish that the travel to California in 1958, was for the purpose of establishing a bona fide residence at that time. In subsequent correspondence [REDACTED] stated that his wife was a lieutenant colonel in the Air Force on active duty at Andrews Air Force Base and not due to retire before September 30, 1962; that coming to California to live within 1 year of his retirement (on May 2, 1958) would have meant breaking up his family, and that he did not stay in California but returned to Washington, D.C.

At the time of [REDACTED] retirement, section 303(a) of the Career Compensation Act of 1949, 63 Stat. 813, as amended by section 1 of the act of August 11, 1955, 69 Stat. 691 (now 37 U.S.C. 404) provided that under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel at Government expense from last duty station to home upon retirement. The law provided that a member who is retired in [REDACTED] circumstances may select his home for the purpose of such travel.

Regulations issued pursuant to that statutory authority are contained in the Joint Travel Regulations. Paragraph M1150-3(b) (change 60, July 1, 1957) of these regulations provides that the term "home of selection" means the place selected by a member as his home upon retirement. Paragraph M4158 (change 67, March 1, 1958) of those regulations provides that a member upon retirement may select his home and receive travel allowances thereto from his last duty station provided travel is completed to the selected home within 1 year after the termination of active duty.

B-165476

The purpose of the law and regulations is to authorize transportation at Government expense for a member to the place where he goes to reside following retirement, and unless such a place has been selected and travel to it for that purpose has been performed within 1 year of retirement no right to such travel and transportation allowances has been viewed as accruing. Travel to any place where the member does not establish a home within that time but merely visits, has not been considered travel to a selected home as contemplated by the law and regulations.

In view of [REDACTED] statements that for 6 months following his retirement he traveled to various cities looking for a suitable home for retirement and that after a trip to California following his retirement in 1958, he returned to his home in Washington, D. C., to reside with his wife, an officer in the Air Force stationed at Andrews Air Force Base who did not retire until 1962, it seems clear that his travel to Los Gatos in 1958 was not for the purpose of traveling to a home of selection with the intent to establish a residence. Since the record does not show that he performed any travel for such purpose within 1 year after his retirement, the payment to him of travel allowances for travel to a home of selection was not authorized under the law and regulations.

In his request for reconsideration, the member has not submitted new evidence concerning his travel to Los Gatos, California, during the year following his retirement. Instead, his request for reconsideration is based upon our decision B-180352, June 14, 1974, 53 Comp. Gen. 863. In that decision it was held that a member who is denied travel and transportation allowances to a home of selection under 37 U.S.C. 404(c) and 404(g) because he did not travel to a place he intended to make his home or because such travel was not performed within 1 year after termination of active duty, if otherwise qualified, is entitled to travel and transportation allowances under 37 U.S.C. 404(a) to his home of record or place from which he was called to active duty.

However, in our decision B-180352, June 12, 1975, 54 Comp. Gen. 1042, we held that a member's entitlement to travel and transportation allowances to his home of record or place from which he was called to active duty authorized by the June 14, 1974 decision is contingent upon such travel having actually been performed. In addition, we held that since the 1974 decision had, in effect, overruled or modified prior decisions of this Office, it is to be given prospective effect only

REVENUE DEPARTMENT
B-165476

REVENUE DEPARTMENT
B-165476

1042

and, therefore, claims which accrued before its effective date (June 14, 1974) are to be determined in accord with the rules in effect prior to the 1974 decision.

In [redacted] case his home of record at the time of his retirement was Jackson, Mississippi. There is no indication in the record that he traveled there upon retirement nor does he claim travel allowances to that place. In any event since [redacted] claim accrued long before the June 14, 1974 decision, his claim is not to be decided under the new rules announced in that decision, rather it is to be considered under the previously existing rules.

As is indicated above, it seems clear that the travel [redacted] performed to Los Gatos, California, within the 1-year period after his retirement was not for the purpose of traveling to a home of selection with the intent to establish a residence. Accordingly, he is not entitled to travel allowances to Los Gatos and the disallowance of his claim is sustained.

R.F.KELLER

Deputy

Comptroller General
of the United States

TRAVEL EXPENSES
Military personnel
Retirement
to select home
of selection
disallowance
of claim
sustained

TRAVEL EXPENSES
Military personnel
Retirement
to select home
of selection
disallowance
of claim
sustained

TRAVEL EXPENSES
Military personnel
Retirement
to select home
of selection
disallowance
of claim
sustained

TRAVEL EXPENSES
Military personnel
Retirement
to select home
of selection
disallowance
of claim
sustained

TRAVEL EXPENSES
Military personnel
Retirement