



FILE: B-191550

DATE: August 11, 1978

MATTER OF: Sergeant First Class [REDACTED], USA
Retired

DIGEST: A member's claim for personal and dependent's travel from his last duty station to a place contended to be his bona fide home of selection for retirement, Kansas City, Missouri, is disallowed, since he has shown no evidence of actual and continuous residence at that place and the fact that his family from whom he is separated have established a residence there does not provide basis for payment. However, the member may be paid for his personal travel to Grovetown, Georgia, where he actually established a residence after retirement.

This action is in response to a letter dated November 14, 1977, from Sergeant First Class [REDACTED], USA, Retired, [REDACTED], which in effect constitutes an appeal from a settlement by the Claims Division of this Office dated February 10, 1977, which disallowed his claim for personal and dependent travel allowances incident to his retirement from the United States Army.

By Paragraph 16, Special Orders No. 51, dated March 14, 1975, issued by Headquarters United States Army Electronics Command, Fort Monmouth, New Jersey, [REDACTED] was relieved from active duty on May 31, 1975, and placed on the retired list on June 1, 1975.

The member's wife and daughter, unaccompanied by him, traveled from Fort Monmouth, New Jersey, to Kansas City, Missouri, on or about May 23, 1975. During the period June 3-5, 1975, he also traveled to Kansas City, but departed June 9, 1975, for Fort Gordon, Georgia, arriving on or about June 11, 1975. In his original submission of the claim, he stated that his bona fide home of selection was Kansas City, Missouri, and that he intended to travel within the continental United States until he found employment.

Our Claims Division disallowed [REDACTED] claim on the basis that he remained in Kansas City only a few days before leaving for the Fort Gordon area, where he apparently

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has resided ever since. Since transportation at Government expense for him and his dependents following retirement is not authorized to a place where he did not go to reside following retirement, and since his stay in Kansas City did not exceed the span of an ordinary visit, the evidence of record is insufficient to show that he established a residence in Kansas City.

In his request for reconsideration, the member indicates that his stay in Kansas City for such a short period was due to a decision that he and his spouse have a legal separation, that his employment in construction keeps him away from Kansas City, and that while he does not live in Kansas City, the location there of dependents for whom he is responsible makes that place his home.

Section 404 of title 37, United States Code (1970), provides in pertinent part in subsection (c), that a member of a uniformed service who is retired may, not later than 1 year from the date he is retired, select his home for the purposes of the travel and transportation allowances authorized by subsection (a) of that section.

Section 406 of title 37, United States Code (1970), provides in subsection (g) that under regulations to be prescribed by the Secretaries concerned, a member who is retired is, not later than 1 year from the date he is retired, entitled to transportation for his dependents, baggage and household effects to the home selected under 37 U.S.C. 404(c).

Paragraph M4158 of Volume 1, Joint Travel Regulations, implementing section 404(c) of title 37, United States Code, provides in subparagraph 1a that a member on active duty who is retired may select his home and be entitled to travel and transportation allowances thereto from his last duty station. Paragraph M7010-1a contains similar provisions regarding the travel of his dependents to the home selected by the member and paragraph M8262-1 authorizes the shipment of household goods to such location at Government expense.

Appendix J^{Vol. 1} of the Joint Travel Regulations defines "home of selection" as used in these regulations to mean the place selected by a member as his home upon retirement.

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The purpose of these statutes and regulations is to authorize travel at Government expense for a member and his dependents, and transportation of household effects to the place where he goes to reside following retirement. Unless that place has been selected and travel to it for that purpose has been performed, no right to travel and transportation allowances accrues. See 36 Comp. Gen. 174 (1957). Thus, the member's intent to establish a home at a selected place, at the time of his travel to it is a necessary condition to establish the right to travel and transportation allowances to such place. Travel of a member following his retirement to a place at which he does not intend to establish a home, but merely to visit, may not be considered as travel to a selected home as contemplated by the statute and regulations.

The best evidence, of course, that the travel for which a member seeks reimbursement was to a place selected by him as his home, is his actual and continued residence at that place. In cases in which the member's stay in a particular place does not exceed the span of a short visit, the conclusion, in the absence of other clear and convincing evidence to the contrary, is that the travel involved was not travel to a selected home within the contemplation of the Joint Travel Regulations. See 52 Comp. Gen. 242, 244 (1972). In that connection it is noted that the right to travel expenses upon retirement is a right which accrues to the member only. No right accrues to his dependents and payment for dependent travel and transportation of household goods must be based upon the member's entitlements. Thus, the home of selection established by the member limits travel entitlements when his dependents select a different location for their home. See B-183344, May 18, 1976, and B-186397, October 14, 1976.

In the present case, as evidence that he selected Kansas City as his home upon retirement, the member has submitted powers of attorney which he gave his wife, whose address is shown as Kansas City, to pursue claims on his behalf for charges incident to shipment of household goods. While those powers of attorney indicate that the member may have chosen Kansas City, Missouri, as his family's home, the fact remains that he traveled there for only a short stay of less than a week, and it appears that

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his final selection of his home upon retirement was the Fort Gordon area (Grovetown, Georgia), where he continues to reside. Therefore, we must conclude that while he may have intended that Kansas City be his family's home, he did not intend to make it his home at any time during the 1-year period following his retirement. *qsjifm* Therefore, payment of travel and transportation allowances of the member and his dependents to Kansas City, Missouri, is not authorized. Accordingly, the action taken by the Claims Division disallowing [REDACTED] claim is sustained.

However, since [REDACTED] did travel to Fort Gordon (Grovetown, Georgia) within 1 year of retirement where he has apparently resided since then, that place may be accepted as his home of selection for the purpose of his personal travel allowances. Settlement to him on that basis will be made in due course.

R. F. K. Miller
Acting Comptroller General
of the United States

TRAVEL EXPENSES

Military personnel

Retirement

To selected home

Residence establishment

TRAVEL EXPENSES

Military personnel

Retirement

To selected home

Dependents location

TRAVEL EXPENSES

Military personnel

Retirement

To selected home

Right of selection

Accrues to member only

MILITARY PERSONNEL

Retirement

Travel and transportation entitlement

Residence establishment intent

MILITARY PERSONNEL

Retirement

Travel and transportation entitlement

Dependents

TRANSPORTATION

Dependents

Military personnel

Residence establishment

Evidence

RELEASED

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Director, Claims Division

Acting Comptroller General R.F. KELLER

Claim for travel allowances by Sergeant First Class [REDACTED]
[REDACTED], USA, Retired - B-191550-O.M.

Returned to Claims Division file Z-2597142 along with a copy of today's decision B-191550. Settlement should be made for the member's travel on the basis indicated in the decision.

Attachments - 2

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