

DECISION

DIGEST - L-11111
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-150187

DATE: MAY 12 1976

MATTER OF:

DIGEST: Air Force officer ordered on permanent change of station from Athens, Greece, to McGuire Air Force Base, New Jersey, to be discharged for the purpose of enlisting traveled to McGuire where he was discharged, and then traveled to Tyndall Air Force Base, Florida, and enlisted 2 days later. Although it appears member should have been discharged, enlisted and then ordered to new duty station (Tyndall), member may be allowed dependents' travel allowance from Athens to Tyndall but not from Athens to home of record nor from home of record to Tyndall. 1 JTR M4157-2 and M7009-3. Also, reimbursement of portion of dependents' travel by foreign airline must be recovered. 1 JTR M2150 and M7000-8.

This action is in response to letter dated December 3, 1975 (ACF), with enclosures, from Captain J. M. Lebsack, USAF, Accounting and Finance Officer, Tyndall Air Force Base, Florida, requesting a decision concerning travel and transportation entitlements of Sergeant , and his dependents. That request was assigned Control No. 76-1A and forwarded to this Office by endorsement dated January 16, 1976, from the Per Diem, Travel and Transportation Allowance Committee.

Pursuant to Special Orders AA-165 dated January 24, 1975, and Special Orders AD-476 dated March 28, 1975, the member, then a captain in the Regular Air Force, was voluntarily separated from the United States Air Force on March 30, 1975, at McGuire Air Force Base, New Jersey, apparently for the purpose of enlisting in the Regular Air Force. On April 1, 1975, the member was enlisted at Tyndall Air Force Base, Florida, in the Regular Air Force for a period of five years and was assigned to Tyndall Air Force Base as his initial active duty station. Prior to his separation, the member

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had been assigned for duty within the Athens, Greece area. The special orders of January 24, 1975, and March 28, 1975, show the member's home of record and place of entry on active duty as Glenns Ferry, Idaho.

The member's dependents had accompanied him upon his assignment to Greece and by the January 24, 1975 order they were authorized concurrent travel to return to the United States. Pursuant to that authorization, the dependents, apparently without the member, traveled from Athens, Greece, to Glenns Ferry, Idaho, departing on March 12, 1975, and completing the travel on March 24, 1975. That travel was apparently at personal expense by commercial bus from Athens to Frankfurt, Germany, and by commercial airline from Frankfurt to the United States. The airline used for the portion of the travel between Frankfurt and New York, New York, appears to have been Condor, a foreign flag airline. The member on April 15, 1975, made claim for reimbursement for his dependents' travel and was paid the sum of \$971.60 on May 8, 1975, by the disbursing officer at McGuire Air Force Base, New Jersey.

By Special Orders AA-624 dated April 21, 1975, the member was authorized transportation of dependents and shipment of household effects to his new duty assignment at Tyndall Air Force Base, Florida, where he had enlisted two days after his discharge at McGuire Air Force Base. Pursuant to that authorization the dependents traveled from Glenns Ferry, Idaho, to Parker, Florida, near Tyndall Air Force Base, during April 11-12, 1975, for which the member filed a claim in the amount of \$399.60 with the Accounting and Finance Officer at Tyndall Air Force Base. On this trip the member indicates he traveled with the dependents having taken leave and traveled to Idaho to pick up his family and accompany them to Florida. Special Orders AA-624 specifically excluded any reimbursement for transportation expenses of the member from his home of record to the initial duty station on enlistment.

The Accounting and Finance Officer questions the propriety of making payment on the claim since at the time of the member's release from active duty on March 30, 1975, and his enlistment of April 1, 1975, he did not travel from McGuire Air Force Base, New Jersey, the place of his separation, to Glenns Ferry, Idaho, with the intent to establish a bona fide residence, and since the member did not travel to a home of selection, upon separation, he is not entitled to dependent travel.

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The member's military pay record indicates that his separation was by reason of resigning his commission for the purpose of enlisting and thus, was voluntary. It therefore appears that the member's travel authorization upon separation is governed by 37 U.S.C. 404(a)(3) (1970) and paragraph M4157 of Volume 1 of the Joint Travel Regulations (JTR) and the travel authorization of his dependents is governed by 37 U.S.C. 406(a) (1970) and 1 JTR paragraph M7009.

As the Accounting and Finance Officer indicates, it appears that the member's dependents did not travel to Glenns Ferry for the purpose of establishing a residence. However, a determination of that matter is not necessary in this case since the member's discharge was for the purpose of enlisting, in which case, 1 JTR paragraphs M4157-2 (change 265, March 1, 1973) and M7009-3 (change 254, April 1, 1974) are controlling. Paragraph M4157-2 provides in pertinent part:

"A member who is separated from the Service or relieved from active duty for the express purpose of continuing on active duty in * * * another status * * * is not entitled to travel allowances in connection therewith. The service performed subsequent to such separation from the Service or relief from active duty is, so far as travel rights are concerned, merely a continuation of the prior period of service. * * *"
(Emphasis added.)

Paragraph M7009-3 provides in pertinent part as follows concerning travel of dependents in such circumstances:

"A member who is separated from the Service or relieved from active duty for the express purpose of continuing on active duty in * * * another status * * * is not entitled to transportation of dependents in connection therewith * * *. This prohibition will not be construed as denying transportation of dependents when a member is transferred on a permanent change of station in conjunction with re-entry into or continuance in the Service." (Emphasis added.)

In this case the member was discharged as an officer at McGuire Air Force Base for the purpose of enlisting in the Regular

Air Force and continuing his service. Normally we presume, such enlistment would take place at the discharge station and then the member would be given orders transferring him to his next duty station. In this case, however, it appears that after discharge the member traveled to his next duty station where he was then enlisted two days later. Why this apparently unusual procedure was followed is not apparent from the record but it appears to have been sanctioned by appropriate order-issuing Air Force officials. Therefore, in these circumstances we will consider the member's entitlement to travel allowances for his dependents as though he had been discharged, enlisted and then ordered to his new duty station at Tyndall Air Force Base. That being the case his entitlement to dependents' travel is limited to travel from Athens to Tyndall. 1 JTR paragraphs M4157-2 and M7009-3, supra.

As is indicated above, the member received mileage allowance for his dependents from Athens to Frankfurt, reimbursement for their commercial air transportation from Frankfurt to New York, and mileage allowance based on the distance from McGuire to Glenns Ferry. We do not question the mileage allowance from Athens to Frankfurt; however, the mileage allowance within the United States must be limited to the distance from McGuire to Tyndall. To the extent the mileage allowance the member received for the distance from McGuire to Glenns Ferry exceeds the amount from McGuire to Tyndall, it must be collected from him.

In addition since the member's dependents used a foreign registered airline (Condor, a subsidiary of Lufthansa) from Frankfurt to New York, the amount he was reimbursed for that portion of their travel also must be collected from him because United States registered airlines were available, and, thus, the use of a foreign airline was prohibited. See 1 JTR paragraphs M2150 (change 248, October 1, 1973) and M7000-8 (change 265, March 1, 1975); B-179445, September 21, 1973; and B-180946, May 15, 1975.

Since there is no authority for payment of the claim for dependents' travel from Glenns Ferry to Tyndall, payment may not be made on the voucher submitted and it will be retained in this Office.

R.F. KELLER

Deputy Comptroller General
of the United States

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transportation

Failure to use

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Dependents

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Discharge and reenlistment