

RELEASED

JUL 17 1969

3-153231

Mr. Vito F. De Mario  
Data Processing Division  
8th Logistical Command  
APO New York 09019

Dear Mr. De Mario:

This refers to your letter of May 23, 1969, requesting reconsideration of our Claims Division settlement of May 2, 1969, which disallowed your claim for additional reimbursement of travel expenses for travel from Leghorn, Italy, to Washington, D. C., and return.

The record shows that the modes of transportation you chose between Leghorn, Italy, and New York, and New York to Washington, D. C., and return were commercial vessel and commercial railroad, respectively; but you were only reimbursed the constructive cost of air travel, and it is this difference which you have claimed.

It is your contention that the directive issued by the Department of the Army on June 5, 1967, which authorized only aircraft travel for USAREUR civilian employees was unreasonable since it placed you "in an impossible position" in that you "do not willingly fly" and would be unable to fulfill your commitments in the United States. However, the restriction is limited only to the amount an employee can be reimbursed on his travel expenses and does not prevent one from using other means of travel; also, under Volume 2, Chapter 6, Joint Travel Regulations, which does not preclude the issuance of such directives, there is an exception to the air travel requirement, C6001-4g, which reads as follows:

"g. Medical Reasons Precluding Air Travel. An employee will not be required to travel by air if such mode of transportation is medically contraindicated. A medically contraindicated condition is not limited to physical disability. If a traveler has a bona fide fear or aversion to flying, to the extent that serious

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psychological or physical reaction would result, this may be a basis for the issuance of a medical certificate precluding travel by aircraft. Appropriate medical authority at a military installation will be responsible for determining the propriety of issuance of such a medical certificate. The employee and the official directing travel will each be furnished a copy of the written medical determination."

As for your allegation that the flying requirement violates the transportation agreement you signed, it is generally held by this Office that such agreements are for the sole protection of the Government, in the event an employee resigns prior to completion of his employment, and it is not construed to extend further. Thus there was no violation of such agreement by the United States.

Recently this Office decided two cases having a great similarity to your own. In one, B-165721, March 3, 1969, an employee who was not authorized to travel by vessel was not entitled to reimbursement for the difference in amounts between airplane and vessel fares. In the other, B-166553, May 15, 1969 (copy enclosed), it was stated that:

"\* \* \* since you were advised prior to your departure from your overseas duty station that you were not entitled to use surface transportation and you elected to use such transportation for personal reasons, we must sustain the action \* \* \* in disallowing your claim."

Accordingly, the action taken in disallowing your claim is found to be correct.

As to any court action you may wish to take in the matter, we refer you to the provisions of 28 U.S.C. 1346 and 1491 relating to claims cognizable in the United States District Courts and the United States Court of Claims. We have no information regarding the American Civil Liberties Union.

TRAVEL EXPENSES  
Overseas employees  
Constructive travel  
Payment basis

Very truly yours,

Lawrence J. Powers

For the Comptroller General  
of the United States

Enclosure

TRAVEL EXPENSES