

## DECISION



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

Overruled by 54 C.G. —  
(B-180352 June 12, 1975)

FILE: B-182904

DATE: FEB 4 1975

MATTER OF: Personal and dependent travel upon  
retirement - Sergeant First Class  
, USA (Retired)

- DIGEST: 1. Retired Army member who, on termination of active duty effective December 31, 1972, with his dependents completed travel to his home of selection on January 7, 1974, is not entitled to travel allowances for himself under 37 U.S.C. 404(c) (1970) nor to travel and transportation of dependents under 37 U.S.C. 406(g) since such travel was completed more than a year after his termination of active duty and he does not come within the exceptions provided for extending the one-year limitation contained in para. M4158-2b and c and para. M7010, 1 JTR.
2. Army member who is denied allowance for his travel to his home of selection under 37 U.S.C. 404(c) is nevertheless entitled to mileage allowance for travel to home of record or place of entry on active duty under 37 U.S.C. 404(x) without regard to the actual performance of such travel.

This action is in response to a request for reconsideration of the settlement of the Transportation and Claims Division, U.S. General Accounting Office, dated October 4, 1974, which disallowed the claim of Sergeant First Class U.S. Army (Retired) for reimbursement, on a mileage basis, for personal and dependent travel from Dugway, Utah, to Homestead, Florida, his home of selection, incident to his retirement from the United States Army effective December 31, 1972.

The record shows that Sergeant [redacted] was relieved from active duty at the Desert Test Center, Fort Douglas, Utah, effective December 31, 1972, and retired the next day. His home of record was shown as Massapequa Queens, Long Island, New York. The place of entry on active duty was shown as Marburg, Germany.

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Additionally, the record shows that upon retirement, the member was employed by a civilian contractor at the Dugway Proving Ground, Utah, and continued to live in Government housing on post during his employment. In December 1973, the member resigned from his civilian position and planned to move to Florida. While packing of the member's household goods commenced December 26, 1973, they were not picked up for transportation until December 29, 1973, and he was not able to receive clearance to vacate his housing until January 2, 1974. He and his dependents commenced their travel to his home of selection on January 3, 1974, arriving at Homestead, Florida, on January 7, 1974.

Sergeant claim for personal and dependent travel was disallowed because the travel was not performed within one year of the date of release from active duty. He has stated that he was unable to clear his Government quarters and commence his travel before January 3, 1974, because post housing office personnel had been given time off due to the energy crisis and thus were not available to allow him to clear the post prior to January 2, 1974.

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

Section 406(g) of title 37, United States Code (1970) provides that under regulations to be prescribed by the Secretaries concerned a member who is retired is entitled to transportation for his dependents, baggage and household effects to the home selected under section 404(c) of title 37, United States Code.

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.

Subparagraph 2 of this regulation provides that travel to the selected home must be completed within one year after termination of active duty. Exception is made to the one-year requirement where a member undergoes hospitalization or medical treatment or undergoes education or training (paragraph M4158-2b and c).

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Provision for dependent travel to the home of selection similar to that prescribed for eligible members is contained in paragraph M7010 of the regulations.

As the member and his dependents completed travel to the home of selection, Homestead, Florida, on January 7, 1974, more than one year after termination of active duty on December 31, 1972, and such delay did not result from the member's hospitalization, medical treatment, education, or training, his claim for reimbursement and dependent travel to the home of selection must be disallowed. See decision B-178284, June 22, 1973.

Section 404 of title 37, United States Code (1970), provides, in pertinent part (subsection a) that under regulations prescribed by the Secretaries concerned a member of a uniformed service is entitled to travel and transportation allowances for travel upon retirement from his last duty station to his home or the place from which he was called or ordered to active duty.

Paragraph M4157-1a of Volume 1, Joint Travel Regulations, provides that for travel in the United States, a member on active duty who is separated from the service or released from active duty under certain conditions, but excluding paragraph M4158-1a of the regulations (travel to home of selection) will be entitled to mileage from his last duty station to his home of record or the place from which he was ordered to active duty; as the member may elect.

In accord with 37 U.S.C. 404(f) (1970), the regulation also provides that members entitled to mileage under this subparagraph may receive such allowances at the time of separation from the service or relief from active duty without regard to the actual performance of such travel. Additionally, paragraph M4159-5c of the regulations (change 235, September 1, 1972) (currently paragraph M4159-6c) provides for the payment of mileage to the member from a place within the United States to a place outside the United States, where no travel is performed by him.

In decision B-180352, June 14, 1974 (53 Comp. Gen. 963), this Office held as follows:

"\* \* \* [A] member who otherwise qualifies for travel and transportation allowances to his home of record or place from which he was ordered or called

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to active duty under 37 U.S.C. 404(a) and 406(a), is to be afforded such entitlements whenever his entitlement to travel and transportation to home of selection under 37 U.S.C. 404(c) and 406(g) is denied."

Accordingly, Sergeant \_\_\_\_\_ is entitled to receive mileage allowance for travel from Dugway, Utah, to, at his election, either his home of record, Massapequa Queens, Long Island, New York, or the place he last entered on active duty, Marburg, Germany.

R.F. KELLER

Deputy Comptroller General  
of the United States