

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

FILE: B-183344

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MATTER OF: Staff Sergeant Beauregard Daniel, Jr.

DIGEST: A member's claim for personal and dependent travel from his last duty station to his requested place of retirement, Salina, Kansas, is disallowed since, although it appears that the member may have contemplated Salina, Kansas, as his home after retirement he has shown no evidence of 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.

This action is in response to a letter dated February 10, 1975, from Staff Sergeant Beauregard Daniel, Jr., USA, Retired, constituting an appeal from a Transportation and Claims Division (now Claims Division) settlement dated February 5, 1975, which disallowed his claim for personal and dependent travel from his last duty station to New Orleans, Louisiana, his then indicated selected place of retirement for the reason that there was nothing in the record to show that the member and his dependents ever established a residence at that location.

The member contends that he was not attempting to collect home of selection travel and transportation allowances to New Orleans; rather, he considers Salina, Kansas, as his home of selection for the purpose of these benefits.

The record shows that by Letter Orders Number S4-1, dated April 1, 1974, issued by Headquarters, United States Army Air Force Command, the member was released from active duty on April 30, 1974, and retired under the provisions of 10 U. S. C. 3914. Pursuant to the authority of those orders, the member had his household goods shipped under Government Bill of Lading No. H-C, 854,394, to Salina, Kansas, which was indicated in correspondence in the file to be his selected home for retirement purposes.

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The file indicates that the member's wife and two of his children flew from New York, New York, to Salina, Kansas, at about the same time the household goods were shipped. We understand that they are presently residing at that location. The file, however, is not completely clear as to the travel of the member and his other child. According to the information in the file, it appears that about the same time as the member's other dependents traveled, he and his other child traveled by privately owned vehicle from New York, New York, to New Orleans, Louisiana, the member's home of record. While the member indicates that he went from New Orleans, Louisiana, to Salina, Kansas, and states in his February 10, 1975 letter that Salina, Kansas, was the "terminating spot" for himself and his dependents, there is nothing in the file to show that he ever resided there. The file shows only that he traveled to the Pedricktown-Penns - Grove, New Jersey area within two months following his retirement, where he apparently resides at this time.

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 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.

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 entitled to transportation for his dependents, baggage and household effects to the home selected under 37 U. S. C. 404(c). In addition, that subsection provides that baggage and household effects may be shipped to a location other than the home selected by the member. However, the member shall pay any costs in excess of that which it would have cost to ship the goods to his selected home.

Paragraph M4158 of Volume 1, Joint Travel Regulations, implementing section 404(c) of title 37, United States Code, provides in subparagraph 1a and 2a 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 M8260-1 authorizes the shipment of household goods to such location at Government expense.

Appendix J 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.

The purpose of the before-mentioned 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. Until 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. 774 (1957). Thus, the intent to establish a home at a selected place, at the time of travel thereto by a member, is a necessary condition precedent to 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.

In the present case, while the member may have chosen Salina, Kansas, as his home of selection upon retirement, and may have traveled thereto, it appears that his final selection upon retirement was the Pedricktown-Penns Grove, New Jersey area. Therefore, we must conclude that he had no intention of making his home in Salina, Kansas, at any time during the one-year period following his retirement.

Accordingly, payment of travel and transportation allowances of the member and his dependents as well as payment for shipment

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of household goods to Salina, Kansas, is not authorized. However, since the record shows that the member did perform travel to Penns Grove, New Jersey, within the one-year period and has continued to reside there, such location may be accepted as his home of selection for the purpose of his personal travel and transportation of household goods, subject to setoff for monies already expended by the Government to transport his household goods from Fort Tilden, New York, to Salina, Kansas. See 37 U. S. C. 406(g), supra.

R. F. KELLER

Deputy Comptroller General
of the United States