



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

PJM-II

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B-192949

July 12, 1979

Lieutenant Colonel James Z. Metalios,
USA, Retired
6 Hubbard Circle
Bronxville, New York 10708

Dear Colonel Metalios:

We refer to your letter dated May 29, 1979, concerning your [entitlements to personal and dependent travel] from Saudi Arabia to the United States and then to Greece in connection with your retirement from the United States Army in January 1977.

You previously advised us that you intended to appeal our Claims Division's disallowance of your claim for such travel and the finding that you were overpaid. Subsequently, by letter dated December 28, 1978, you advised us that you would be out of the country for 90 days and would not be able to act until you returned. Five months elapsed and we heard nothing further from you. Accordingly, we proceeded to review the settlement on the basis of the available facts in our records, and on June 6, 1979, Comptroller General's decision B-192949 was issued, sustaining the settlement. A copy of that decision, which includes a review of applicable laws and regulations affecting your claim, was furnished to you.

We did not receive your May 29, 1979 letter setting forth the specific errors believed to have been made in the settlement until June 11, 1979. Thus, we did not have the opportunity to review your specific contentions in the matter prior to the issuance of the June 6, 1979 decision. We have carefully considered your latest letter and have concluded that the material submitted does not provide a basis for our revising that decision. However, the following further explanation and information concerning the points raised in your letter are being furnished.

With respect to your suggestion that you were consistently misadvised by Army authorities concerning your entitlements, we do not know exactly what information

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you actually gave those authorities regarding your retirement plans, so that we are not in a position to judge whether all the advice and orders they gave you were actually incorrect at the time and in the circumstances. In any event, in preparing our June 6, 1979 decision, we were aware that you felt you had been misadvised concerning your entitlements; however, the fact that you may have received erroneous advice would not entitle you to payments and benefits not authorized by the applicable laws and regulations. Our Office and the courts have long followed the rule that in the absence of specific statutory authority, the United States is not liable for the negligent or erroneous acts of its officers, agents, or employees, even though committed in the performance of their official duties. See Federal Crop Insurance Corporation v. Merrill, 322 U.S. 380 (1947); Posey v. United States, 449 F. 2d 228, 234 (1971); Parker v. United States, 198 Ct. Cl. 661 (1972); and 56 Comp. Gen. 943 (1977). Also, in accordance with that rule, written orders which purport to authorize travel at public expense are ineffective to the extent they do not conform to the applicable laws and regulations. 57 Comp. Gen. 201 (1978); 33 Comp. Gen. 196 (1953).

While it is unfortunate that you may have received erroneous advice from Army officials, or that you may not have fully understood your travel entitlements under the law and regulations, such circumstances do not afford a legal basis upon which unauthorized travel allowances may be granted to you.

You also suggest that your dependents had to leave Saudi Arabia at the time you departed that country, and there was no alternative but to have them accompany you to the United States then. However, your retirement orders had been published at the time, and evidently you had already formulated plans to establish a retirement home in Greece. Under the regulations, your retirement orders would have authorized your family to travel directly to Greece at the time you went to Fort Dix to briefly complete your personal separation processing, but

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you say that you did not tell the concerned Army authorities in Saudi Arabia of your plans to establish a retirement residence in Greece. As we indicated in our June 6, 1979 decision, you would have been entitled to have your dependents accompany you at public expense to the United States under your permanent change-of-station orders only if you had intended to establish, and did in fact establish, a permanent family residence in the United States.

Perhaps if the concerned Army authorities in Saudi Arabia had been made aware of your intentions of selecting Greece as your retirement home rather than the United States, the misunderstanding and the present unfortunate controversy would not have arisen. Since there is no showing that the travel of your dependents from Saudi Arabia to the United States in January 1977 was in fact performed as a matter of official business arising from requirements imposed upon them by the Government, rather than primarily as a matter of personal convenience simply to accompany you on a brief assignment, we may not revise the determination made that such travel was not properly authorized at public expense.

You also indicate that your credit for travel from the United States to Greece should not be limited to the \$239 tariff for military airlift established by regulation because you were told by certain Army personnel to purchase your own tickets for that travel and later file for reimbursement. However, under the applicable regulations in such a case your reimbursement is limited to the lowest applicable tariff charge the Army would have been required to pay. Volume 1, Joint Travel Regulations, paragraph M4159-4a (change 285, November 1, 1976). As previously mentioned, the fact that you may have received erroneous advice or that you may not have fully understood that advice, does not afford a basis upon which unauthorized travel allowances may be granted to you.

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As to your suggestion that the credit allowed for the constructive travel of your dependents from Dhahran, Saudi Arabia, to Athens, Greece, should not be limited to the tariff for military airlift established by Air Force Regulation (AFR) 76-11 for travel between those 2 points, we could agree with you only if it were to be shown that military airlift between those places was in fact nonexistent, and that the rate established by regulation was therefore meaningless. The rate applied (\$83) was the Dhahran to Athens rate published in AFR 76-11 which establishes rates for traffic moving by aircraft operating under Military Airlift Command authority. That rate was in effect at the time your dependents traveled and, it appears, would have been the rate charged the Army had your dependents traveled directly from Saudi Arabia to Greece by Government arranged transportation.

We regret that you are dissatisfied with our determinations concerning your entitlement to personal and dependent travel incident to your retirement from the Army. As previously indicated, however, the matters contained in your letter of May 29, 1979, do not furnish a basis for changing the determinations made.

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A copy of this letter is being furnished to Senator Daniel P. Moynihan, who has expressed an interest in your case.

Sincerely yours,

R. F. Keller
Deputy Comptroller General
of the United States