

PL II

DECISION



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

10,034

FILE: B-194599

DATE: May 22, 1979

Addressee - text

MATTER OF: Shipment of household effects to selected home

DIGEST: 1. Authority to promulgate regulations granting exceptions in deserving cases to the 1-year limitation for travel of a member and transportation of dependents and household goods to a home of selection incident to retirement has existed since the enactment of Public Law 89-680. Regulations implementing the authority were not issued until August 1, 1976, and a determination was made that entitlements under these regulations would be prospective only. Construction or amendment of regulations so as to encompass cases arising prior to August 1, 1976, is not proper in view of long-standing rule that rights fixed thereunder may only be amended with prospective application.

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END 2.

A member who does not make a selection of a home incident to retirement within 1 year of retirement, but has assurance prior to expiration of 1-year limitation that recall to active duty is imminent, may have household goods shipped to home of selection on subsequent retirement following a period of active service.

May the shipment of household goods to a home of selection incident to retirement be authorized in certain deserving cases arising prior to August 1, 1976, even though the 1-year limitation on selection has expired?

This question was presented for advance decision by the AGC 00094 Assistant Secretary of the Navy (Manpower, Reserve Affairs & Logistics) in a letter dated March 30, 1979. The matter was assigned PDTATAC Control No. 79-7, by the Per Diem, Travel and Transportation Allowance Committee.

Travel of a member and transportation of dependents and household goods to a home of selection in connection with retirement from the uniformed services must be accomplished within 1 year of the retirement. Public Law 89-680, approved October 15, 1966, 80 Stat. 957, amending 37 U.S.C. §§ 404(c), 406(d), and 406(g), restated this

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long-standing administrative rule and provided certain exceptions to it. The exceptions addressed specifically in the legislation and its history provided for an extension of the 1-year rule in cases where a member was hospitalized at the time of retirement or when the member entered an educational or training program following retirement. The law and the legislative history also indicated that the Secretaries concerned should have the discretion to authorize extensions of the 1-year rule in certain other deserving cases.

In this regard, we indicated in decision B-126158, April 21, 1976, that no objection would be raised to an amendment to 1 Joint Travel Regulations (1 JTR) providing for Secretarial extensions of the 1-year rule in certain deserving cases. Effective August 1, 1976, a change to 1 JTR was issued authorizing these extensions (see para. M4158-2d, 1 JTR). However, the Per Diem, Travel and Transportation Allowance Committee advised the service Secretaries that this would operate prospectively only and could only include persons separated prior to August 1, 1976, if the 1-year limitation had not expired on that date.

The present question is whether objection would be raised if exceptions to the 1-year rule were now granted for cases arising prior to August 1, 1976, since Secretarial authority for such action existed with the enactment of Public Law 89-680. The view is expressed that the determination to limit application of this authority to cases arising after August 1, 1976, may have been too restrictive in view of certain deserving cases which have come to the attention of the Per Diem, Travel and Transportation Allowance Committee.

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Typifying these deserving cases is that of General Alexander M. Haig, Jr. The submission states that while serving as Vice Chief of Staff of the Army, General Haig was temporarily detailed in May 1973 to assist the President at the White House. Subsequently, he was asked by the President to serve as Chief of Staff of the White House. As a result General Haig retired from the Army on August 1, 1973, having over 26 years of service at that time. During his employment at the White House, he was unable to select a home incident to his retirement for the purposes of travel and transportation allowances.

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In October 1974, he was recalled to active duty and appointed the Supreme Allied Commander Europe. Pursuant to this recall to active duty he shipped part of his household goods to his new duty station and placed the remainder in storage at Falls Church, Virginia. He now intends to revert to retired status on June 30, 1979, and would like to select a home for the purposes of shipping his household effects.

As noted in the submission Public Law 89-680 provided the authority for the Secretaries to grant exceptions to the rule requiring travel and transportation to be performed to a home of selection within 1 year of retirement. The language of the statute, however, is quite specific as to the implementation of this discretionary authority. It provides for the 1-year limitation "except as prescribed in regulations by the Secretaries concerned." Cases involving illness and training were the only ones included in the regulations issued until those regulations were amended to cover other deserving cases on August 1, 1976.

This Office has consistently held that when regulations are properly issued, rights thereunder become fixed and, although such regulations may be amended prospectively to increase or decrease rights given thereby, they may not be amended retroactively. 32 Comp. Gen. 315 (1953); 32 id. 527 (1953); 33 id. 174 (1954); 40 id. 242 (1960); and 47 id. 127 (1967). Cf. 33 Comp. Gen. 505 (1954) and Friedlander v. United States, 120 Ct. Cl. 4 (1951).

Thus, it is our view that no authority exists under 1 JTR which would permit the exception authority to be exercised in those cases in which the 1-year period had expired prior to August 1, 1976.

In the specific case of General Haig the exception provisions of Public Law 89-680 and implementing regulations are not applicable. However, information provided by the Office of the Deputy Chief of Staff for Personnel, Department of the Army, indicates that prior to the expiration of the 1-year period for selecting a home incident to his retirement in August 1973, General Haig and the President had discussed Haig's desire to return to active duty. In fact, the information provided states that General Haig had always considered it desirable to return to active duty and that his decision to retire had been dictated by extraordinary political circumstances existing at the time of his appointment

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in the White House. It is also noted that it was in reliance upon the agreement between General Haig and the President that he was recalled to active duty and assumed the responsibilities of his present position.

Paragraph M8262-1, 1 JTR, contains general implementing regulations relating to shipment of household goods to the member's home of selection. That paragraph includes the requirement that the goods must be turned over to a transportation officer within 1 year of active duty termination.

Paragraph M8262-7 provides as follows:

"7. RECALLED TO ACTIVE DUTY PRIOR TO SELECTION OF A HOME. A member who is otherwise eligible to select a home but is recalled to active duty prior to the selection of a home and performance of travel thereto will upon termination of active duty for any reason under honorable conditions, be entitled to non-temporary storage (subpar. 3) and shipment of household goods (subpar. 1) to a home of selection provided that such goods are turned over to a carrier for shipment within 1 year after the member is last released from active duty. * * *"

In the circumstances presented General Haig did not select a home within 1 year of his retirement on August 1, 1973. However, it is stated that prior to the expiration of that 1 year, General Haig had reached an understanding with the President that he would be recalled to active duty as soon as circumstances permitted. Thus, shipment of household goods, travel and transportation to a home of selection prior to August 1, 1974, would have been merely for the purpose of protecting his right to such an election and would not bear any relationship to his retirement when it was known that recall to active duty was imminent.

Furthermore, keeping in mind the unusual circumstances at the time these actions were taking place and on the basis of the statement of facts by the Department of the Army, particularly that recall to active duty had been established prior to August 1, 1974, it is our view that General Haig is entitled to have his household goods shipped to his home of selection under 1 JTR, M8262-7.


Deputy Comptroller General
of the United States