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DECISION

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

FILE: B-195420

DATE: January 9, 1980

MATTER OF: Major Robert W. Magnuson, USMC

DIGEST: Marine officer transferred from unrestricted duty station in North Carolina to restricted duty station at Okinawa, Japan, certified that dependents' travel to New Hampshire was travel to a designated place for purposes of establishing a bona fide residence. Subsequently, he alleges certification was done because of erroneous advice and that dependents intended to establish residence in Okinawa. Member claims dependents' travel from North Carolina to Los Angeles, California, the port of embarkation for Okinawa. Since member's entitlement vested upon his certification of New Hampshire and dependents' actual travel there, member may only receive dependents' travel allowances to New Hampshire. *[Request for]*

The question in this case is whether Major Robert W. Magnuson, a Marine Corps member, may receive additional reimbursement of dependents' travel expenses incident to the member's transfer to a restricted duty station. As will be explained below, the member is not entitled to further reimbursement.

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By letter of July 2, 1979, the Disbursing Officer, Marine Corps Air Station (Helicopter), New River, Jacksonville, North Carolina, has submitted this question for an advance decision. The Per Diem, Travel and Transportation Allowance Committee approved the submission and assigned it Control No. 79-23.

In April of 1977, Major Magnuson was ordered to perform a restricted tour of duty at Okinawa, Japan. That is, his dependents were not authorized to accompany him. On August 31, 1977, he reported to the appropriate

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Fleet Marine Service unit in San Francisco for transportation to Okinawa. While at San Francisco, Major Magnuson indicates that in response to a question about the current location of his dependents, he stated they were in Littleton, New Hampshire, his home of record.

Upon arrival in Okinawa, Major Magnuson signed a travel voucher for dependents' travel which, among other things, indicated his dependents were establishing a residence at Littleton, New Hampshire, his home of record, to which they traveled in July 1977. Based on this, he received payment of his dependents' travel expenses from their last residence at his previous duty station in Jacksonville, North Carolina, to Littleton, New Hampshire.

Major Magnuson's dependents subsequently traveled at Major Magnuson's expense from Littleton to Okinawa where they arrived on September 9, 1977, and remained with him until his tour of duty ended on August 25, 1978. Because of this travel of his dependents, Major Magnuson requested and received a supplemental payment for their travel based on the cost from Jacksonville, North Carolina, to Los Angeles, California, the point of debarkation to Okinawa. Additionally, upon completion of his Okinawa assignment, the member was reassigned to Jacksonville, North Carolina, and was joined by his dependents. He then requested and received payment on September 23, 1978, for his dependents' travel from Los Angeles, California, to Jacksonville, North Carolina.

On January 3, 1979, the Marine Corps Finance Center determined that the member had been overpaid for his dependents' travel. The Finance Center determined that Major Magnuson upon his initial transfer had erroneously received reimbursement of his dependents' travel from Jacksonville to Los Angeles and upon his second transfer had erroneously received reimbursement of his dependents' travel from Los Angeles to Jacksonville. He should only have received payment for dependents' travel from Jacksonville to Littleton and Littleton to Jacksonville based on the original voucher he signed which certified Littleton, New Hampshire, as the designated place for his dependents.

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Accordingly, collection action was begun to recover the overpayment of \$497 from him.

Major Magnuson contends that he is entitled to the disallowed travel expenses for his dependents. Basically, he alleges that under appropriate military regulations, he is entitled to the expenses and that but for erroneous information he would have received these amounts.

Under 37 U.S.C. § 406(a) (1976), a member ordered to make a change of permanent station is entitled to transportation of his dependents. Subsection (c) of this statute provides in effect that the Secretaries concerned shall prescribe the regulations to implement this statutory entitlement, including conditions and limitations, and to and from such places as the Secretaries prescribe.

The implementing regulation at the time in question for the transportation of dependents when a member is transferred to a restricted duty station outside the United States from a permanent station inside the United States were contained in Volume 1, Joint Travel Regulations (1 JTR), para. M7005-2 (change 285, November 1, 1976). Of relevance to this case are the provisions 1 JTR, para. M7005-2.1 and 2.2. Under subsection M7005-2.1, transportation of a member's dependents is authorized to "any place in the United States the member may designate." Under subsection M7005-2.2, transportation of a member's dependents is authorized to "the point of actual departure of dependents from the United States in conjunction with travel to a place outside the United States designated by the member." A designated place under 1 JTR, para. M7001 is a place certified by the member as one where his dependents will in fact establish a bona fide residence.

With these regulations in mind, the problem becomes whether Major Magnuson's designation of Littleton, New Hampshire, exhausted his entitlement or whether he is entitled to the additional allowances incident to their travel to Okinawa. As the discussed regulations seem to indicate, the member originally could have designated

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either Littleton, New Hampshire, or Los Angeles, California, for his dependents' travel.

In a previous case, we considered the effect of a member erroneously certifying a designated place for his dependents incident to his transfer to a restricted duty station. In this case, B-165724, March 26, 1969, the member received misinformation from appropriate Air Force personnel regarding his entitlement which resulted in his certifying as a designated place the location to which his dependents immediately traveled but one which he claimed was not intended to be their bona fide residence. We held that when the member certified the designated place on the appropriate form and received the travel expenses for his dependents' actual travel to the designated place his entitlement was exhausted. The fact that misinformation may have caused this does not provide a legal basis to authorize any additional amounts as the member's entitlement vested upon the completion of his dependents' travel to the designated place. See B-165724, March 26, 1969. See also B-164438, September 25, 1968; and B-151317, June 11, 1963.

Moreover, under Marine Corps Order (MCO) 1300.8K Enclosure (4), para. 1 (change 1, September 25, 1975), a member assigned to a Fleet Marine Force unit in the Western Pacific is not authorized to be accompanied by dependents. Dependents of members serving restricted tours of duty may only visit as bona fide tourists at their own expense. Thus, even if Major Magnuson had certified Okinawa as the designated place for his dependents, we could not authorize reimbursement for the travel expenses from Jacksonville to Los Angeles, the point of debarkation. We reach this result because the above-cited order prohibits a member from establishing a residence at the restricted duty site with his dependents; therefore, he could not certify this location as a designated place under the authority of 1 JTR, para. M7005-2.2, in the absence of advance approval from appropriate authority for dependents to establish residence in Okinawa.

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Accordingly, Major Magnuson may not receive the claimed amounts.

Milton J. Fowler

For the Comptroller General
of the United States