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DECISION

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

FILE: B-202543 **DATE:** October 29, 1981

MATTER OF: Return travel to United States for dependents of uniformed services member following divorce

DIGEST: Proposed amendment to the Joint Travel Regulations to increase from 6 months to 1 year after relief of uniformed services member from his overseas duty station during which transportation of ex-family members must take place should not be implemented. Any extension of time for travel beyond that currently allowed may be authorized only if justified on an individual case basis when it can be shown that the return took place as soon as reasonably possible after the divorce and departure of the member from the overseas station.

The Acting Assistant Secretary of the Army (Manpower and Reserve Affairs) has requested our decision as to whether Volume 1 of the Joint Travel Regulations (1 JTR) may be amended to eliminate the requirement that in cases where a member's marriage is dissolved, entitlement to transportation of ex-family members will terminate 6 months after the relief of the member from the overseas duty station incident to a permanent change of station. The request has been assigned Control No. 81-2 by the Per Diem, Travel and Transportation Allowance Committee. Since return of the family members must be reasonably related to the termination of the family member status, we cannot authorize a general increase in the time allowable. However, a provision which would authorize the granting of exceptions to the 6-month limit would not be objectionable if those exceptions were allowed only in cases where the delay was not merely a matter of personal preference and return to the United States was accomplished as soon after the divorce or annulment as was reasonably possible.

In decision 53 Comp. Gen. 960 (1974), we stated that we would have no objection to an amendment to Volume 1 of the JTR that would permit members of the uniformed services stationed overseas to be reimbursed for the return travel to the United States of a spouse

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who traveled to the foreign post as a dependent but ceased to be dependent as of the date the member became eligible for their return travel because of divorce or the annulment of the marriage. The decision also applied to a member's minor children who because of custody and support agreements would not qualify as the member's dependents after the divorce or annulment. The JTR was amended accordingly and currently includes this entitlement in paragraph M7104. Paragraph M7104-7 also provides that such transportation "must be completed within 1 year after the effective date of the final decree of divorce or annulment as applicable, or 6 months after the date of relief of the member from the overseas duty station incident to a permanent change of station, whichever occurs first."

The proposed change to paragraph M7104-7 would eliminate the 6-month time limitation and in lieu thereof entitle the member to the transportation of the ex-family members up to 1 year after the final divorce decree regardless of when the member departed from the overseas duty station, provided the divorce occurred prior to the member's permanent change of station. The legality of that part of the proposed revision which would provide an entitlement 1 year after the member travels has been questioned. Since the return travel must be linked to the member's entitlement to return his dependents, we cannot approve of the proposed revision.

The change to the regulation is proposed because, it is stated, the 6-month requirement is creating hardships for many ex-family members who, for legitimate reasons such as being hospitalized, and having medical problems, and completion of the school year, desire to remain in the overseas area beyond the 6-month period allowed. The proposal would provide authority for the ex-family members to remain overseas up to 1 year after the final divorce decree without regard to the reason for the delay.

In 52 Comp. Gen. 246 (1972) we stated that the travel regulations recognize an obligation on the part of the Government to return members of certain civilian

employees' families who were transported overseas for the convenience of the Government although the families ceased to be dependents of the employees when they became eligible for return travel. In subsequent decisions, citing 52 Comp. Gen. 246 as support, we have not objected to proposed revisions to the travel regulations extending return travel to ex-family members of other civilian employees and military personnel. See 53 Comp. Gen. 960 (1974) and 53 Comp. Gen. 1051 (1974). Regarding the children, we noted that amendments to the regulations approved in those decisions were not a radical departure from the previous practice since the employee or member would, in many cases, continue to be responsible for their support and they would remain members of his family. See B-163138, January 17, 1968. Also, although an ex-wife would not technically be a dependent of the member following a final divorce, often the member would be responsible for her support and it would impose a financial hardship upon him to provide for her return travel. We took into consideration the legislative history of 37 U.S.C. § 406(h), under which the change in the military regulations was authorized, which indicated that Congress was aware of the potential problems that could result for both a member and the United States if dependents were to remain overseas because the member could not afford to provide for their return travel to the United States after marital difficulties had arisen. Also, the providing of return travel avoids the potential embarrassment to the United States caused by the presence overseas of ex-family members who are unable to return home due to lack of funds.

However, the entitlement to travel is related to the status of the spouse and children as dependents of the member. It is not a travel entitlement any such dependent has in his or her own right. Thus, when the marriage ends there is no further right to travel except as recognized in 52 Comp. Gen. 246. Under that authority travel is allowed incident to the divorce and this must be accomplished within a reasonable time after that event. Although we do not now question the time allowed under current regulations, it does not appear to be within the intent of the holding in 52 Comp. Gen. 246 to permit the

ex-spouse of a member to remain overseas for 1 year after the member has been transferred without regard to the reason for such an extended stay. Accordingly, if the length of time specified is considered inadequate in some instances, provision should be made for granting exceptions to the general rule on the basis of a showing that the delay was not merely a matter of personal preference and that the return to the United States was accomplished as soon after the divorce or annulment as was reasonably possible in the circumstances.

The regulations should not be amended except in accordance with the above.

for Milton J. Socolar
Comptroller General
of the United States