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DECISION



21589
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-204679

DATE: April 21, 1982

MATTER OF: Colonel Louis A. Reinken, Jr.,
USA, Retired

DIGEST: Based on two letters issued by an Army officer's headquarters which indicated that household goods acquired through marriage "can qualify" for an additional weight allowance, the officer questions the Army's denial of the additional allowance in shipping his household goods. The Army did not interpret the letters as requiring that the additional allowance be granted and they were not the statutory regulations establishing the weight allowances. We do not view those letters as binding on the Army and find that Army considered the member's request under appropriate regulations and did not abuse its discretion in denying the request.

In connection with his permanent change of station from Germany to the United States in 1974, the Army informed Colonel Louis A. Reinken, USA, that he had incurred excess transportation costs when he shipped his household goods at Government expense. The Army denied Colonel Reinken's request for an additional weight allowance to cover the excess. After Colonel Reinken disagreed with the Army's action, the Army referred the matter to our Claims Group which reviewed it and sustained the Army's determination. Colonel Reinken requested reconsideration of the Claims Group's determination. For the reasons which follow, we affirm the Claims Group's determination.

Incident to his permanent change of station from Germany to Fort Monmouth, New Jersey, in June 1974, Colonel Reinken shipped his household goods at Government expense. Because his household goods weighed several thousand pounds more than his authorized weight allowance, he requested an additional weight allowance based on the fact that some of his furnishings had been obtained at his own expense in Germany since they were not available on loan from the Government. He requested another additional weight allowance because, while stationed in Europe,

he had married a German citizen who possessed, what he termed, intrinsically valuable personal property which they wished to retain and take with them to the United States. Colonel Reinken believed that the sudden sale of that property, or its shipment at his own expense, would have imposed an undue hardship on him. The Army granted him an additional allowance for the goods which were not available for him in Germany. However, the additional allowance for his wife's goods was not granted, and he was charged for the excess weight.

Colonel Reinken cited as authority for his requests for additional weight allowances two letters which had been issued by the Army's Theater Support Command, Europe. The first letter was apparently dated June 15, 1973. The record does not contain a copy of this letter, nor were we able to obtain it from the Army or Colonel Reinken. The record does contain a copy of the second letter which is dated July 19, 1973. This letter indicates that it amends provisions of the first letter and states that when a member applies for the shipment of household goods at Government expense, the application must be accompanied by certain statements or certificates. It also states in part:

"(3) Items Acquired through Marriage - Items acquired through marriage subsequent to assignment in USAREUR [Army in Europe] can qualify for excess weight approval if certified by the sponsor and authenticated by his Adjutant or CO. Items acquired will be shown on a separate DD Form 1701 and must have been in the spouse's possession prior to marriage."

The Army's denial of the additional weight allowance for Colonel Reinken's wife's goods was reported in a memorandum, dated June 12, 1974, from Headquarters, United States Army, Europe and Seventh Army. This memorandum indicated that Colonel Reinken's request for the additional weight allowance had been reviewed and was returned "without action." Specifically, it stated that:

"2. Each request for exception to the administrative weight restriction must be evaluated upon its own merit. That items are acquired through marriage is not by itself justification for exception to the administrative weight restriction UP [under provisions of] paragraph 5-4c (1)(c), AR 55-71."

The Army interpreted this to mean that an additional allowance was permitted, rather than mandated, if hardship is demonstrated as is otherwise required under paragraph 5-4c, Army Regulations 55-71. The Army did not find the required hardship present in Colonel Reinken's case.

In his request for reconsideration of our Claims Group's determination, Colonel Reinken states that the authority to approve his request existed and all conditions had been met, but the Army failed to officially respond to his request. He indicates that since he met the requirements of the regulation, his request should have been approved unless there was a published policy change. Disapproval of his request would place him in a hardship position because of the timing of his move and the status of the preparations for the move as well as the burden which would be imposed by either shipment at personal expense, or forced sale at a loss of "irreplaceable", and "intrinsically" valuable property.

Colonel Reinken refers to the two letters issued by the Army in Europe as "regulations" which, implicitly, must be complied with. However, they are not the statutory regulations providing an Army member's household goods shipping entitlements. Instead, these letters were apparently providing administrative guidance on the entitlements. This is indicated by the letter of July 19, 1973, which describes its subject as "Checklist for Applications of HHG and POV's," and uses permissive, rather than mandatory language.

The statutory authority for the transportation of military members' household goods is 37 U.S.C. § 406, under which transportation is authorized subject to

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such conditions and limitations; for such grades, ranks and ratings; and to and from such places as the Secretaries of the services prescribe. The Secretaries' implementing regulations are found in Volume 1, Joint Travel Regulations, paragraph M8004-2 of which provided the restricted weight allowance applicable in Colonel Reinken's case. This paragraph also provided for additional allowances for personally owned furnishings required in lieu of unavailable normally provided Government furnishings in overseas areas. The administrative weight restrictions were made subject to conditions and areas set forth in the individual service regulations, which in Colonel Reinken's case were Army Regulations 55-71. Paragraph 5-4c of the Army Regulation, which was cited by the Army in rejecting Colonel Reinken's request for the additional weight allowance rather than the two letters issued by the Army in Europe, is the applicable regulation. That regulation commits the granting of additional weight allowances to the Army's discretion in those cases in which "extenuating circumstances exist and the imposition of administrative weight limitation would result in hardship." Army Regulation 55-71, paragraph 5-4c(1)(c).

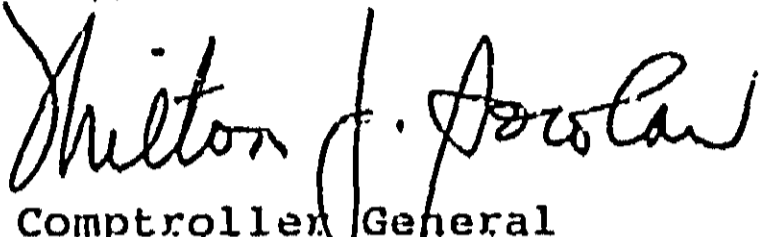
The record indicates that the Army did consider Colonel Reinken's request for an additional weight allowance on the grounds of his acquisition of property by marriage. The June 12, 1974 memorandum referred to clearly states that his request was considered, but grounds sufficient to justify granting the request were not found. Contrary to Colonel Reinken's view, the Army did not consider acquisition of additional household goods through marriage sufficient, in itself, to be a ground for an additional weight allowance; rather, the Army apparently considered such a case on the basis of any hardship involved. Although hardship was not specifically mentioned in the June 12 memorandum, it is obvious that such was the standard applied by the Army since the memorandum referred to the hardship provision in the Army Regulations.

This was a matter within the Army's discretion, and Colonel Reinken has not shown that the Army abused its discretion when it refused to grant his request for

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the additional allowance for the property he acquired by marriage. Compare Matter of Plies, B-196994, May 9, 1980.

Accordingly, the determination of the Claims Group is affirmed, and collection of the charges for the excess weight should proceed.

for 
Comptroller General
of the United States