

DECISION

24175
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-209302**DATE:** February 1, 1983**MATTER OF:** Home-of-Selection Travel and
Transportation Allowances

DIGEST: The Joint Travel Regulations, Volume 1, may be amended to include travel and transportation allowances to a home of selection for a member discharged or released from active duty with separation pay under 10 U.S.C. § 1174 (Supp. IV, 1980). A statute must be read in the context of other laws pertaining to the same subject and should be interpreted in light of the aims and designs of the total body of law of which it is a part.

We have been asked whether Volume 1 of the Joint Travel Regulations may be amended to include travel and transportation allowances to a home of selection for a uniformed services member discharged or released from active duty with "separation pay." Release from active duty with separation pay was added by the Defense Officer Personnel Management Act. Public Law No. 96-513, section 109, 94 Stat. 2835, 2870, enacting 10 U.S.C. § 1174 (Supp. IV, 1980). Travel and transportation allowances provided under 37 U.S.C. §§ 406(d) and (g) for a member's dependents and household effects were amended to reflect release from active duty with separation pay. Pub. L. No. 96-513, section 506. However, 37 U.S.C. § 404(c) which authorizes a qualified member to select his home for the purpose of travel and transportation allowances was not amended to refer to a member released with entitlement to separation pay. We find that, in accordance with the purpose and intent of Congress in providing for release of members with entitlement to separation pay, they are also entitled to travel and transportation allowances to their home of selection when they otherwise qualify.

The question was presented by the Assistant Secretary of the Army (Manpower and Reserve Affairs), and was assigned Control No. 82-22 by the Per Diem, Travel and Transportation Allowance Committee.

82-22-31
7/10/83

Background

The Officer Personnel Management Act, cited above, amended titles 10 and 37 of the United States Code. A primary purpose of the Act was to revise and standardize the law relating to appointment, promotion, separation, and mandatory retirement of Regular commissioned officers of the Army, Navy, Air Force, and Marine Corps. See S. Rep. No. 96-375, 96th Cong., 1st Sess. (1979). Significantly revised were procedures providing for a lump-sum payment upon involuntary separation ("separation pay").

Separation pay is a contingency payment for members of the armed services involuntarily separated from active duty after completing 5 years of service but prior to becoming entitled to retirement pay. The purpose of the separation payment is to ease the member's re-entry into civilian life. S. Rep. No. 96-375 at p. 28. Prior to the Officer Personnel Management Act there were various types of separation payments. Regular officers who were discharged received "severance pay" while Reserve members who were involuntarily released received "readjustment pay."

The readjustment and severance pay provisions were repealed and superseded by a new section. Pub. L. No. 96-513, section 109. The new provision, 10 U.S.C. § 1174 (Supp. IV, 1980), provided a standard name ("separation pay") and formula for computing the amount of pay due to members involuntarily separated from the service. Because a member with less than 10 years of service would receive more under the older provisions, a savings provision was included to permit a member on active duty when the new law was enacted to elect under either the old or new provisions. Pub. L. No. 96-513, section 607.

The standardization of the separation pay procedures required conforming amendments to the travel and transportation allowances provisions. Travel and transportation allowances to a home of selection upon separation or retirement are provided under 37 U.S.C. §§ 404 and 406. Section 406 allows travel and transportation allowances for dependents, baggage and household effects. Specifically, section 406(d) authorizes

nontemporary storage of baggage and household effects; section 406(g) provides for transportation of dependents and household goods. These travel and transportation allowances are available only to members entitled to make a home of selection under 37 U.S.C. § 404(c) (1976). Section 404(c) permits a qualified member to elect a home of selection within 1 year of separation. To qualify for these allowances a member involuntarily separated must have "at least eight years of continuous active duty with no single break therein of more than 90 days." 37 U.S.C. §§ 404(c)(1)(B); 406(d)(2); 406(g)(2) (1976).

In enacting Pub. L. No. 96-513, Congress technically amended 37 U.S.C. §§ 406(d)(2) and 406(g)(2) to specifically refer to release from active duty with separation pay. However, a similar amendment was not made to 37 U.S.C. § 404(c). Therefore, the qualifying language in section 404(c) providing for selecting a home upon release for members involuntarily separated remains:

"* * * immediately following at least eight years of continuous active duty with no single break therein of more than 90 days, is discharged with severance pay or is involuntarily released from active duty with readjustment pay * * *." 37 U.S.C. § 404(c)(1).

As is indicated above, sections 406(d) and (g) were specifically amended to reflect the change to separation pay for an involuntarily separated member who:

"* * * immediately following at least eight years of continuous active duty with no single break therein of more than 90 days, is discharged with separation pay or severance pay or is involuntarily released from duty with separation pay or readjustment pay. * * *" (Emphasis added.)

Since section 404(c) was not changed by the Officer Personnel Management Act, the Assistant Secretary

questions whether the Joint Travel Regulations can be amended to include home-of-selection travel and transportation allowances for members released from active duty with separation pay.

Discussion

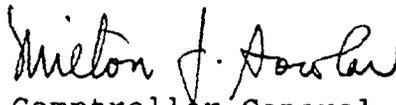
The Joint Travel Regulations implement the basic laws relating to travel for uniformed services personnel. Thus, to determine if the Joint Travel Regulations can be amended to include transportation allowances to a home of selection for a member discharged or released from active duty with separation pay, we must find that there is appropriate statutory authority.

This requires that we interpret 37 U.S.C. § 404(c) in light of the later enacted 10 U.S.C. § 1174. Not only must a statute be given a rational and sensible interpretation, it must also be read in the context of other laws pertaining to the same subject and should be interpreted in light of the aims and designs of the total body of law of which it is a part. Cohen v. United States, 384 F.2d 1001 (Ct. Cl. 1967).

Section 404(c) does not include the phrase discharged or involuntarily released with separation pay. Thus, a literal interpretation of section 404(c) would deny travel allowances for travel to a home of selection to members released with separation pay. However, such a restricted reading of section 404(c) would lead to an absurd result. Only those members with 8 continuous years of service who elected severance pay or readjustment pay under the saving clause would be entitled to the travel allowances to a home of selection. Those members who elected the new category of separation pay (which replaces severance and readjustment pay) would not technically come under the section 404(c) entitlement provision. Clearly, this is not what Congress intended. The technical amendment of section 406 to include references to separation pay shows that Congress meant the travel benefit provisions to be read in conjunction with the new pay category.

The legislative history is silent as to why section 404(c) was not amended, which lends support to the conclusion that it was an oversight. There is no indication that the unifying of separation pay was intended to prevent the granting of travel benefits upon home of selection. Congress made no substantial changes in the eligibility for the additional pay nor did Congress substantively affect the travel and transportation entitlements. Therefore, all the rights and benefits applicable to Reserve members and Regular officers under the prior separation provision would still pertain under the new law. Thus, we are led to the conclusion that a member involuntarily separated with separation pay would be entitled to the same benefits as a member released with readjustment pay or discharged with severance pay. Cf. 55 Comp. Gen. 166 (1975). . . When we read 37 U.S.C. § 404(c) in light of 10 U.S.C. § 1174, and the amendments to 37 U.S.C. § 406 discussed above, we find that members who have served continuously for 8 years and subsequently are discharged or involuntarily released with separation pay are entitled to travel and transportation allowances to a home of selection.

Accordingly, amendment of the Joint Travel Regulations to that effect is authorized.

for 
Comptroller General
of the United States