

DECISION

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

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FILE: B-212480**DATE:** February 15, 1984**MATTER OF:** James R. Dunworth**DIGEST:**

The children of an employee of the Panama Canal Commission who live in San Francisco with the employee's wife are not eligible for tour renewal travel to Panama to visit the employee during summer vacation. Unless the children return to Panama to live they cannot be considered members of the employee's household within the meaning of the Federal Travel Regulations.

The issue in this decision is whether the sons of Captain James R. Dunworth, an employee of the Panama Canal Commission, who live in San Francisco, California, with their mother and attend school there, are eligible for tour renewal travel to Panama.¹ The sons are not members of the employee's household within the meaning of the Federal Travel Regulations and are not, therefore, entitled to transportation at Government expense.

BACKGROUND

Captain Dunworth, a pilot employed by the Panama Canal Commission, resides in Panama. His wife and dependent sons, John and Michael, live in San Francisco where the sons attend school. In August 1982 Captain Dunworth and his family traveled to San Francisco on tour renewal agreement travel, but his wife and sons did not return to Panama. In 1983 Captain Dunworth requested tour renewal travel for his sons so that they could visit Panama during their summer vacation. The Commission denied Captain Dunworth's request on the basis that his sons were no longer members of his household within the meaning of para. 2-1.4d of the Federal Travel Regulations (FTR) (FPMR 101-7, September 1981) and our decision Matter of Gianotti, 59 Comp. Gen. 450 (1980). Captain Dunworth contends that his sons are members of his

¹This decision results from the request of the Administrator of the Panama Canal Commission in a letter dated July 26, 1983, for an opinion on whether the employee's sons are eligible for tour renewal travel.

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household, since he and Mrs. Dunworth are neither divorced nor legally separated and his sons are merely attending school in San Francisco. While he has not indicated that their proposed travel is for resuming residence, he contends that they have remained members of his household within the meaning of the regulations while living in San Francisco. The Commission, therefore, has asked our decision regarding the status of Captain Dunworth's sons as members of his household and consequently their continued entitlement to tour renewal travel.

GENERAL LEGAL AUTHORITY

Tour renewal travel for an employee and his immediate family is authorized under 5 U.S.C. § 5728 and regulations prescribed thereunder found at FTR para. 2-1.5h. In addition, FTR para. 2-1.4d defines "immediate family" to include the employee's children who are:

"* * * members of the employee's household at the time he/she reports for duty at the new permanent duty station or performs authorized or approved overseas tour renewal agreement travel * * *"

Under this definition a child of an employee qualifies as a member of the employee's "immediate family" if the child is a "member of the employee's household" at the time the renewal travel is performed. There is no dispute that the term "children" is sufficiently broad to include children whose custody has been jointly placed in an employee and his spouse. 52 Comp. Gen. 878 (1973). However, in order for an individual to be covered by the definition of "immediate family" as it appears in the regulations and consequently entitled to the transportation allowance claimed, it is necessary for that person to be one of the named individuals and a member of the household of the employee. Matter of Raynor, B-187241, July 5, 1977. To be considered a member of the employee's household an affirmative finding must be established that the children are residing at the employee's overseas post and not merely engaged in visitation travel to the employee's post while actually residing elsewhere. Matter of Gianotti, cited earlier.

The term "household" is not defined in the regulations. We have stated that the term is one of uncertain meaning and that persons may be members of the same household even though they are not living under the same roof. 48 Comp. Gen 457 (1969). The meaning of the term "household" was also discussed in our Gianotti decision. There we found that the actual duration of an individual's residence with the employee plus the intent of the parties to make the individual a "member of the employee's household" are evidentiary facts to be considered.

In Raynor, cited earlier, we concluded:

"However, the facts in this case show that the children actually reside with their mother approximately 11 months of each year and although the employee has joint custody of said children, rather than a permissive right to visit the minors, plans for them to visit at his residence in Juneau for one month during the summer, and is financially responsible for the support of his children, the period of time during which they actually live with the claimant is not of sufficient duration to warrant a determination that the children are in fact 'members of the employee's household.' * * *"

We have also recognized that if the employee and his spouse live apart temporarily because of the demands of their separate employment they may still be considered to maintain one household. Matter of Rogers, B-209002, March 1, 1983.

CONCLUSION

Captain Dunworth has put great emphasis on the fact that he and his wife are neither divorced nor legally separated. This he contends distinguishes his case from our other decisions holding that children who do not reside with the employee are not members of the employee's family.

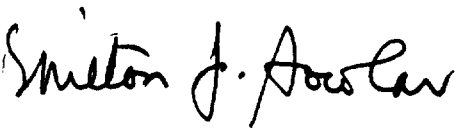
We do not find this argument compelling. The crucial facts are that Captain Dunworth's sons live in San Francisco with Mrs. Dunworth and that the intended purpose of their

B-212480

proposed visit to Panama was for a summer vacation, in other words, visitation travel. Captain Dunworth has not indicated that his sons are returning to Panama for the purpose of taking up their residence there.

We have concluded on occasion that children or spouses not living together remain members of the same household due to the intent of the parties concerned. However, we do not find evidence of the requisite intent to reach this conclusion in Captain Dunworth's situation. Instead we find what appears to be a permanent change of living arrangements with the sons residing in San Francisco, not merely attending school there.

In these circumstances we hold that the Commission acted properly in denying tour renewal travel to Captain Dunworth.


for Comptroller General
of the United States