



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

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D-178265

July 12, 1973

Captain Adelbert L. Platz
347 Carmel Avenue
Space 36
Marina, California 93933

Dear Captain Platz:

In your letter dated March 15, 1973, you appeal the settlement of our Transportation and Claims Division dated February 14, 1973, which denied your claim for a refund of the amount collected for the entire cost of moving your house trailer (\$2,796.50) from Savannah, Georgia, to Seattle, Washington, incident to your assignment to duty in Vietnam.

By orders dated February 9, 1970, you were ordered from Hunter Army Airfield, Georgia, on permanent change of station to USARV Transient Detachment, APO San Francisco 96384, with temporary duty en route at Fort Eustis, Virginia. According to the record, at the time of this order you were living off base in your privately owned house trailer and were receiving basic allowance for quarters. Based on your certification that your house trailer was to be transported for use by you, or your dependents as a residence, it was moved at Government expense from Savannah, Georgia, to Seattle, Washington, prior to your assignment to Fort Eustis. The trailer was presumably located in Seattle during the period of your assignment in Vietnam.

While you were stationed at Fort Eustis it was discovered that you were not married and had no dependents who would use your trailer during your overseas assignment. In accordance with paragraph H10008-2a of the Joint Travel Regulations (JTR), and paragraph 13-8 of Army Regulation (AR) 55-71, it was determined that the movement of the house trailer at Government expense was not authorized. Under these regulations, a member is entitled, incident to an overseas assignment, to movement of his house trailer to a designated place in the United States at Government expense only when such trailer is intended for use by his dependents as a residence. Since you had no dependents

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and, therefore, your house trailer in Seattle could not be considered to be your residence during your overseas assignment, an amount equal to the cost of the movement (\$2,796.50) was deducted from your pay. Our Transportation and Claims Division, by settlement dated February 14, 1973, disallowed your claim for refund of this amount.

The basis of your claim for a refund of the amount collected from you is that your house trailer in Seattle was in fact maintained as a residence during the period of your assignment in Vietnam. In support of this position, you state that you actually resided in the trailer for a period of more than thirty days prior to your departure, and for a like period after your return from Vietnam. You also state that while overseas you had your mail forwarded to you through the trailer address in Seattle, and that all of your personal belongings and household goods remained intact in the trailer during this period. Additionally, you express the belief that denial of the allowance in question reflects prejudice against unmarried members of the uniformed services.

Section 409 of Title 37, United States Code, the controlling statute in the present case, provides that under regulations prescribed by the Secretaries concerned, and in lieu of transportation of baggage and household effects or payment of a dislocation allowance, a member of the uniformed services who would otherwise be entitled to transportation of baggage and household goods may transport a house trailer within the continental United States "for use as a residence." Paragraph M10008-2a JTR and 13-8 of AR 55-71, referred to above, are the implementing regulations where the transportation of a house trailer is incident to an overseas assignment. The statute you cited in your letter (5 U.S.C. 5724(b)) applies to civilian employees of the Government and not to members of the uniformed services.

The term "for use as a residence" is not defined in either 37 U.S.C. 409 or the implementing regulations. However, the legislative history of section 409 clearly shows that the term refers to the actual, physical occupancy of the house trailer. (S. Rept. No. 125, 84th Cong., 1st sess. 17). Thus, a member is entitled to the transportation of his house trailer at Government expense only if he or his dependents are to physically occupy the trailer during the period of his new assignment (i.e., actual use of the trailer as a residence). That the member may consider the house trailer to be his residence during his assignment is not material as long as neither he nor his dependents live in the trailer during this time.

In view of the fact that the transportation of your house trailer to Seattle was incident to your assignment to Vietnam, it is clear that you could not in fact occupy the trailer during this assignment. We note in this regard that you say that you actually resided in your house trailer for a period of more than thirty days prior to your departure, and a like period after your return from Vietnam. Presumably such occupancy was during periods of leave to and from your overseas assignment. However, you did not occupy the trailer at your permanent duty station in Vietnam, nor did you have dependents who occupied the trailer at a designated location in the United States during this time.

In this connection paragraph M8253-2(b) of the regulations provides that when an otherwise eligible member is transferred on a change of permanent station from a station in the United States to an overseas station and his dependents are not authorized to accompany him, he is entitled to transportation of his household effects to any place in the United States he may designate under the provisions of paragraph M7005-2, item 1. Under that provision he may, in such circumstances, designate a place in the United States to which his dependents may be transported at Government expense.

However, a member without dependents has no right to designate a place in the United States for shipment of his household effects and neither does he have such a right to designate such a location for movement of his house trailer.

Consequently, we must conclude that the movement of the trailer to Seattle, Washington, at Government expense, was not authorized. Such determination is not indicative of prejudice against unmarried members of the uniformed services, as the purpose of the allowance is to provide for transportation of a house trailer at Government expense only when it is to be occupied during a member's tour of duty, whether by the member himself, or by his dependents, as applicable.

We have considered your statement in your letter to the Finance Center, United States Army, in Indianapolis, Indiana, that according to the Transportation Offices at Fort Stewart, Fort Lewis and Fort Ord, you would have had the right under the pertinent regulations to move the maximum weight allowance of household goods under your PCS orders and have the entire weight of your belongings put in storage at Government expense for as long as 15 months during your tour in Vietnam. As stated above, we find no authority entitling a member without dependents to designate a place for shipment of his household

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goods upon his assignment to a restricted overseas duty station. It is noted that under paragraph MB101, JTR, you were entitled to storage of your household goods during the period of your tour in Vietnam. This does not provide a basis for a refund, however, for the amount collected for the cost of transporting your house trailer to Seattle, Washington.

Accordingly, the settlement of February 14, 1973, is sustained.

Sincerely yours,

PAUL G. DEMBLING

Acting Comptroller General
of the United States