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

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B-178643

July 24, 1973

Mr. Walter A. Lees
9402 Vickijohn Drive
Houston, Texas 77071

Dear Mr. Lees:

We refer to your letter of May 7, 1973, requesting reconsideration of the settlement of our Transportation and Claims Division, dated April 30, 1973, which disallowed your claim for additional reimbursement for shipment of your household effects and additional travel allowance from your last duty station to your home of record incident to your separation from active duty on December 22, 1970, at McGuire Air Force Base, New Jersey.

By Special Order No. ACA-32, dated November 12, 1970, you were relieved from your overseas station and assigned to 438th Air Base Group (MAC), McGuire AFB, New Jersey, for the purpose of separation. This order shows your home of record as San Antonio, Texas, and the place from which you were ordered to active duty as an officer as Methuen, Massachusetts. It was administratively reported that upon separation you elected and were paid travel allowance to Methuen, Massachusetts. At your request your household effects were shipped to Houston, Texas, but you were required to pay the difference in cost between shipment to that point and the authorized destination (Methuen, Massachusetts) in the amount of \$223.97.

Subsequently you submitted a claim for reimbursement of the above amount and additional travel allowances from McGuire AFB, New Jersey, to Houston, Texas. The basis of your original claim was that you were erroneously advised that your travel and shipment of household effects entitlements were limited to the place from which you were ordered to active duty (Methuen, Massachusetts).

By settlement of April 30, your claim was disallowed under paragraphs M4157-1 and M8259-1 of the Joint Travel Regulations (JTR). Paragraph M4157-1 provides that a member on active duty who is separated therefrom will be entitled to mileage from his last duty station to his home of record or the place from which he was ordered

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to active duty as he may elect. Paragraph M8259-1 provides that upon separation a member is entitled to shipment of his household effects from (1) the last or any previous permanent duty station (2) a designated place to which transported at Government expense and (3) a place of authorized storage, to the place the member elects to receive his travel allowance under paragraph M4157. It is further provided therein that the member may elect to have his household effects shipped to another location, but subject to his payment to the Government of the excess costs involved.

Since you had elected and were paid travel allowances to Methuen, Massachusetts, your listed place of entry on active duty as an officer as shown on Special Order No. ACA-32 dated November 12, 1970, it was concluded in the settlement that you had been paid the correct amount in allowances. With respect to your contention concerning erroneous advice as to your entitlements, it was pointed out that this would not afford a basis for the payment of your claim in view of the long established rule that in the absence of specific statute so providing, the Government is not responsible for the negligent or erroneous acts or omissions on the part of its officers and employees.

With your letter of May 7 you enclosed a copy of Special Order No. AB-1129, dated December 22, 1970, relieving you from active duty and you ask that we further consider the matter. You state that this order superseded the earlier dated Special Order ACA-32, referred to above. We should mention here that Special Order AB-1129 was not contained in our records at the time the settlement of April 30 was made. This order shows Methuen, Massachusetts, as both your home of record and the place of entry into active service. You state in this regard that because this order incorrectly identified your home of record as Methuen, Massachusetts, the Government employee advising you of your entitlements could not have permitted you to elect a travel allowance to any other location but Methuen. Since Special Order AB-1129 prohibited the employee from allowing you any alternative, you recommend an amendment to this order allowing shipment of goods to San Antonio, Texas, and return of excess charges of \$223.97.

It appears to be your belief that San Antonio, Texas, was your home of record at the time of your release from active duty on December 22, 1970, and therefore for purposes of mileage and shipment of household effects under paragraphs M4157-1 and M8259-1, cited above, you were entitled to an election from your last duty station to either Methuen, Massachusetts, as your place of entry on active duty, or San Antonio, Texas, as your home of record.

Examination of your official records reveal otherwise. These records show that you enlisted in the United States Air Force at Boston, Massachusetts, on November 13, 1964, for entry in the Officer Training School Class 65-E, Headquarters, Lackland MTC, Lackland Air Force Base, San Antonio, Texas. On February 9, 1965, you were discharged in order to accept an officer's commission the next day. Methuen, Massachusetts, was recorded as your home of record at the time you enlisted, when you were commissioned an officer, and at the time of your release from active duty on December 22, 1970. See enclosed copy of DD Form 4 Enlistment Record, and copies of DD Form 214, Report of Transfer or Discharge, relating to your discharge as an enlisted man and as an officer. You will note that these official records contain your signature.

Paragraph M1150-3a, JTR, provides in pertinent part that the term "home of record" means the place recorded as the home of the individual when commissioned, reinstated, appointed, reappointed, enlisted, reenlisted, inducted, or ordered into the relevant tour of active duty. In this light, and on the basis of the above-mentioned records we must conclude that your right of election for purposes of mileage and shipment of household effects under the above paragraphs was necessarily limited to Methuen, Massachusetts. See B-147477, November 8, 1961, copy enclosed. Your statement that under Special Order AB-1129 the Government employee advising you of your entitlements could not have permitted you to elect a travel allowance to any other location but Methuen is therefore correct. We have no authority to amend Special Order AB-1129 as requested by you.

We recognize that subsequent to your release from active duty you attempted to establish San Antonio as your home of record as indicated by your letter of November 16, 1971, to the Commander, Air Reserve Personnel Center, Denver, Colorado. No correction action appears to have been taken on your request. In this connection, paragraph M1150-3a, Joint Travel Regulations, also provides for the correction of a recorded home of record where due to a bona fide error the place originally named at the time of current entry into the service was not in fact the actual home. This paragraph specifically provides that any such correction must be fully justified and the home, as corrected, must be the actual home of the member upon entering the service, and not a different place selected for his convenience. It is clear from the record that Methuen, Massachusetts, was your actual home at the time you entered the service as an enlisted man on November 13, 1964.

Moreover, Methuen must be considered on the basis of the present record to have been your actual home at the time you were commissioned

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on February 10, 1965. Regarding your letter of November 16, 1971, none of the statements made therein or evidence submitted therewith can serve as a basis of establishing San Antonio as your home of record at the time that you were commissioned in February 1965 since all of the pertinent factors listed in this letter refer to events and years subsequent to 1965. Presumably the Department of the Air Force did not consider the information contained in your letter of November 16, 1971, as being fully justified to warrant a correction of your home of record under paragraph III150-3a.

In view of the above, and on the basis of the official records before us, the payment of mileage to Methuen, Massachusetts, and the charge of \$223.97 for the shipment of your household effects to Houston, Texas, was proper. The settlement of April 30, 1973, is therefore sustained.

Sincerely yours,

E. H. Morse, Jr.

For the Comptroller General
of the United States

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