

DECISION



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

FILE: B-131632

DATE: JUN 17 1976

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MATTER OF: **Transportation Allowances**

DIGEST: Regulations may be promulgated under 37 U.S.C. 406(h) (1970) to authorize transportation of household effects and a private automobile of a member of the uniformed services serving overseas, without dependents, incident to the member's discharge under conditions other than honorable, similar to the transportation authorized members with dependents discharged in such circumstances. 44 Comp. Gen. 574 (1965) will no longer be followed.

This action is in response to a letter dated May 29, 1975, from the Assistant Secretary of the Army (Manpower and Reserve Affairs) requesting a decision with respect to questions which have arisen as a result of 44 Comp. Gen. 724 (1965). Specifically the questions concern the shipment of household effects, and privately owned vehicles of members without dependents when they are discharged under other than honorable conditions while stationed overseas. That request was assigned PDTATAC Control No. 75-16 and forwarded to this Office by letter dated June 3, 1975, from the Per Diem, Travel and Transportation Allowance Committee.

The submission refers to 44 Comp. Gen. 724, supra, as holding that 37 U.S.C. 406(h) (1970) authorizes transportation of dependents, household effects, and a privately owned motor vehicle from overseas in certain situations involving discharge of a member of the armed services under other than honorable conditions. The question presented is whether transportation of household effects and a motor vehicle is allowable in the case of members without dependents in those same situations.

In his letter the Assistant Secretary states that 1 Joint Travel Regulations (1 JTR), para. M8015, Item 2, prohibits transportation of household effects in cases involving discharge under other than honorable conditions except in the case of members with dependents involving travel from duty stations outside the United States. It is also stated that 1 JTR para. M11002-5 relates to shipment of privately owned motor vehicles in those same situations.

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The Assistant Secretary asserts that it has long been the recognized responsibility of the Government to relocate a member of the armed services and his personal belongings when that member is required to move incident to Government orders. To do otherwise, the Assistant Secretary asserts, could cause a member to lose his personal belongings because of lack of means to dispose of them. He requests that the matter be reviewed and that he be advised whether the Joint Travel Regulations may be amended to provide authority for the following:

"* * * (1) for the movement of a member's baggage and household effects from the overseas location to an appropriate location in the United States or its possessions and (2) for the movement of a privately-owned motor vehicle owned by the member to an appropriate port in the United States in cases where the members discussed in your decision /44 Comp. Gen. 724, supra/ were without dependents or had no dependents in the overseas area."

Public Law 88-431, approved August 14, 1964, 78 Stat. 439, added 37 U.S.C. 406(h), which provides in pertinent part as follows:

"(h) In the case of a member who is serving at a station outside the United States or in Hawaii or Alaska, if the Secretary concerned determines it to be in the best interests of the member or his dependents and the United States, he may, when orders directing a change of permanent station for the member concerned have not been issued, or when they have been issued but cannot be used as authority for the transportation of his dependents, baggage, and household effects--

"(1) authorize the movement of the member's dependents, baggage, and household effects at that station to an appropriate location in the United States or its possessions and prescribe transportation in kind, reimbursement therefor, or a monetary allowance in place thereof, as the case may be, as authorized under subsection (a) or (b) of this section; and

"(2) authorize the transportation of one motor vehicle owned by the member and for his or his dependents' personal use to that location * * *."

In 44 Comp. Gen. 724, supra, we considered whether, under 37 U.S.C. 406(h), the Joint Travel Regulations could be amended to authorize return transportation to the United States of dependents, household effects and privately owned motor vehicles in the following situations:

"a. A member discharged overseas pursuant to sentence of court martial.

"b. A member returned from overseas to the United States, its territories or possessions from discharge pursuant to sentence of court martial.

"c. A member returned from overseas to the United States, its territories or possessions, for administrative discharge.

"d. A member returned from overseas to the United States to serve a sentence of confinement; he may or may not be discharged upon termination of confinement.

"e. A member serving sentence of confinement in a civil or a military confinement facility overseas, discharge not yet effected."

Prior to the enactment of Public Law 88-431, it was held that there was no authority for the transportation of dependents and household effects at Government expense of members incident to their separation from the service under conditions other than honorable whether the member's duty assignment was within the United States or overseas. See 37 Comp. Gen. 21 (1957) and 42 Comp. Gen. 568, 571 (1963). However, in 44 Comp. Gen. 724, supra, we concluded that 37 U.S.C. 406(h), amended by Public Law 88-431, provides authority for the promulgation of regulations authorizing the return transportation of dependents, household effects and a privately owned motor vehicle of a member serving overseas in cases involving separation under other than honorable conditions whether such separation is effected overseas or in the United States.

However, prior to our decision in 44 Comp. Gen. 724, supra, in 44 Comp. Gen. 574 (1965), we considered whether under the provisions of 37 U.S.C. 406(h), the household effects and motor vehicle of a member overseas and without dependents could be transported at Government expense to the United States. At that time we stated that prior to the enactment of Public Law 88-431,

the similar authority provided in 37 U.S.C. 406(e), was not viewed as providing authority for the advance movement of household effects independent of the dependents. Since we found no evidence of any legislative intent that subsection 406(h) was to have any broader scope in that respect than subsection 406(e), it was our view that it could not be considered as authority for the movement of the household effects and automobile of a member without dependents. See also 45 Comp. Gen. 442 (1966), and 49 Comp. Gen. 695 (1970).

The effect of our decisions in 44 Comp. Gen. 574, supra, and 44 id. 724, supra, has been to extend certain authorities with respect to overseas transportation of household effects and a privately owned motor vehicle to members with dependents, but not to members without dependents who are similarly situated.

The legislative history of Public Law 88-431 shows that at the time it was enacted, the Congress was primarily concerned with providing authority, in addition to that already contained in section 406(e) of title 37, for the advance movement of dependents and thus, the legislative history of Public Law 88-431 is primarily concerned with that specific subject. See 44 Comp. Gen. 724, 726, and 44 Comp. Gen. 574, 576.

In light of the information provided this Office by the Assistant Secretary in his letter of May 29, 1975, and in view of the difficulties resulting from our decision in 44 Comp. Gen. 527, supra, and 44 id. 724, supra, we have reexamined previously held positions with respect to the scope of 37 U.S.C. 406(h). In view of the facts now before us it is our conclusion that the language of 37 U.S.C. 406(h) is broad enough to provide authority for the advance movement of the household effects and privately owned motor vehicle of a member without dependents in those five situations contained in 44 Comp. Gen. 724, and quoted above. We find nothing in the legislative history of that provision showing a specific intention to the contrary. Accordingly, we would not now object to a change in regulations in line with the Assistant Secretary's proposal. The question is answered in the affirmative.

To the extent that 44 Comp. Gen. 574 and anything stated in 45 Comp. Gen. 442 and 49 Comp. Gen. 695, are inconsistent with this decision, those decisions no longer will be followed.

R. F. Keller

Deputy Comptroller General
of the United States