DECISION

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

50917

FILE: B-183310 DATE: SEP 9 1975

97549

MATTER OF: Thomas H. Hamara

DIGEST:

Army employee requested home leave travel by foreign surface vessel for medical reasons. He was authorized to travel from Germany to United States by military or civilian air only. Even though he elected to travel by surface vessel of foreign registry, he is entitled to reimbursement for constructive cost of air travel from Germany to United States because passenger carrying ships of United States registry were not available and, therefore, 46 U.S.C. 1241(a) does not preclude such reimbursement.

By letter of January 24, 1975, Mr. Thomas H. Hamara, a Department of the Army civilian employee, requested a review of Settlement Certificate No. Z-2119213 dated October 16, 1973, in which our Transportation and Claims Division (TCD) disallowed his claim for travel expenses and per diem incident to home leave travel in May 1972. The items claimed were ship travel, $709.95; land portion of travel to ship terminal, approximately $34; and per diem, $172.30. Mr. Hamara states that, since he was unable to travel by plane for medical reasons, the Army improperly refused to authorize his travel by foreign surface vessel. He contends that he is entitled to reimbursement as limited in 2 Joint Travel Regulations, para. C10200 (change 75, December 1, 1971).

The record shows by the entry in block 6 of Travel Order No. 4-511, April 5, 1972, that the Army authorized Mr. Hamara to travel under the authority of 5 U.S.C. 5728(a) (Travel and transportation expenses; vacation leave) from Frankfurt, Germany, to Long Beach, California. 5 U.S.C. 5728(a) provides, in pertinent part, that,

" * * * an agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family * * * from his post of duty outside the continental United States to the place of his actual residence at the time of appointment or transfer to the post of duty, after

> he has satisfactorily completed an agreed period of service outside the continental United States and is returning to his actual place of residence to take leave before receiving another tour of duty at the same * * * post of duty outside the continental United States under a new written agreement made before departing from the post of duty."

Office of Management and Budget (OMB) Circular No. A-56, effective September 1, 1971, provided at 1.12b(2) (Overseas tour renewal agreement travel) (Allowances) that:

> "/T/hese allowances are payable in accordance with the provision of the Standardized Government Travel Regulations and are limited to per diem in lieu of subsistence and transportation costs for the employee and transportation costs (but not per diem in lieu of subsistence) for his immediate family."
>
> * * * * *
>
> "(3) Alternate Destination * * * The amount allowed for travel and transportation expenses when travel is to an alternate location shall not exceed the amount which would have been allowed for travel over a usually traveled route from the post of duty to the place of actual residence and for return to the same or a different post of duty outside the continental United States as the case may be."

In block 7 of the travel order, the Army authorized Government and commercial rail, air, and bus modes of transportation; it did not authorize ship transportation from Germany to the United States. This authorization was apparently pursuant to the mandate of 5 U.S.C. 5733, (Expeditious travel) which states:

> "/t/he travel of an employee shall be by the most expeditious means of transportation practicable and shall be commensurate with the nature and purpose of the duties of the employee requiring such travel."

While OMB Circular No. A-7, § 2.2, effective October 10, 1971 (Standardized Government Travel Regulations), (Methods of Transportation)

authorizes the agencies to specify railroads, airlines, helicopter service, ships, buses, etc., such section also authorizes the agencies to select which of these particular methods of transportation may be used by the employee for travel. In this connection also see 2 JTR, para. C6001-1a and b (change 74, December 1, 1971). Under the provisions of 2 JTR, para. C6001-3a (Overseas Travel - Determination of Mode.), the transportation officer determines the mode of travel unless the officer directing the travel specifies a particular mode. Furthermore, the transportation officer may authorize the use of surface means of transportation, if the traveler so requests, whenever the needs of the service do not require the use of a faster mode. Regarding travel by aircraft, the officer directing the travel may require civilian employee to perform necessary travel by regularly scheduled commercial aircraft except where medical reasons preclude air travel. Para. C6001-4g (change 74, December 1, 1974) provides that:

> "* * * /A/n employee will not be required to travel by air if such mode of travel is medically contra-indicated. A medically contra-indicated condition is not limited to physical disability. If a traveler has a bona fide fear or aversion to flying, to the extent that serious psychological or physical reaction would result this may be the basis for the issuance of a medical certificate precluding travel by aircraft. Appropriate medical authority at a military installation will be responsible for determining the propriety of issuance of such a medical certificate."

Mr. Hamara sought to avail himself of the provisions of para. C6001-4g by his letter of April 25, 1972, to the Chief of Out Patient Psychiatry, 97th General Hospital, Frankfurt. He requested a certificate that travel by air was "medically contra-indicated," citing medical reports from his German doctor, Air Force doctors, and others, that the employee had developed a phobia about flying. In a reply of May 3, 1972, the Chief of Out Patient Psychiatry stated that he had reviewed the record submitted by the employee, but that he could not comply with the employee's request. The reason given for the refusal was that the medical record indicated that transportation by "Air Evac" was indicated.

On May 25, 1972, Mr. Hamara learned that his April 12, 1972, request for surface travel by foreign flag carrier with reimbursement

had not been authorized. The denial was based on a DA directive of December 4, 1969, to CO TRANSCOMEUR OBENURSEL GER that stated:

> "1. The use of foreign flag commercial surface carriers is not authorized.
>
> "2. Further, the Surgeon General ruled on 29 November 1969, that with very few exceptions all personnel can be transported by military or commercial aircraft without undue hazard to their state of health. Individuals who manifest acute illness should be moved via medical evacuation channels."

The directive was in response to an earlier inquiry as to whether the loss of American Flag passenger service meant that the official directing travel could authorize personnel "medically contra-indicated" from air travel to use foreign flag commercial carriers.

Although such travel was not approved, Mr. Hamara traveled from Wiesbaden, Germany, to LeHavre, France, May 4, 1972, thence to New York City on the S.S. France from May 5 to May 10, 1972. He returned to Wiesbaden on June 15, 1972, crossing the Atlantic presumably by foreign flag carrier on June 8 to 14, 1972.

The various agencies covered by the Standardized Government Travel Regulations have discretion regarding authorizing of transportation modes. The record does not indicate any abuse of this discretion in this case. Mr. Hamara's request for a medical waiver to the general air travel requirement was considered by a responsible official who determined that transportation by the air evacuation appeared to be indicated in accordance with the Army's directive. There is, therefore, no support for the employee's claim for reimbursement of the actual expenses incurred by him.

2 JTR, para. C10200 (change 75, December 1, 1971), however, does allow constructive transportation costs and expenses as a basis for reimbursement for travel accomplished by unauthorized modes, provided that certain conditions are met. B-177449, January 23, 1973. In view of this provision we disagree with the following statement in the settlement of October 15, 1973:

> "The question of whether American Flag vessels were or were not available at the time of your travel would not

be material in your case. Your travel order authorized commercial transportation to be acquired at your own expense with reimbursement limited as provided for in paragraph C10200 of the Joint Travel Regulations * * * Reimbursement for travel by any form of ocean going surface vessel was not authorized since this mode was not specified in item seven of your travel order. * * *"

Our disagreement is based on the fact that para. C10200 operates only in those situations where block 7 of the travel order is not completed so as to authorize the mode of transportation actually used. Since para. C10200-3 (change 75, December 1, 1971) provides that reimbursement on a constructive basis will not be "allowed for that portion of travel for which a traveler uses a foreign flag ship when a United States flag carrier is available in connection with either usual or circuitous route travel," the availability of United States flag vessels is material to the employee's case. See Section 901, Merchant Marine Act of 1936, 49 Stat. 2015, as amended, 46 U.S.C. 1241(a) (1970) as the statutory basis for the policy contained in C10200-3.

We informally requested TCD to determine whether or not American flag ships or MST ships were available to the employee for the travel in question. TCD determined that there were no passenger ships of American registry, civilian or military, available for the employee's travel. Since the employee could not have traveled by a ship of American registry, then 46 U.S.C. 1241(a) and JTR, para. C10200-3, do not operate to preclude constructive reimbursement to the employee. Therefore, the claim for reimbursement should be paid on a constructive cost basis if otherwise correct.

In view of the above we have instructed our TCD to process the claim in accordance with this decision.

R.F. KELLER

Deputy Comptroller General
of the United States