

4433

04346

**DECISION**



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

**FILE:** B-131632

**DATE:** November 30, 1977

**MATTER OF:** Transportation Allowances

**DIGEST:** Regulations may not be promulgated under 37 U.S.C. 406(h) (1970) or any other statutory provision to authorize transportation of dependents and household effects of a member of the uniformed services with dependents and shipment of household goods for a member without dependents serving within the United States, incident to the member's discharge under conditions other than honorable similar to the transportation authorized members with or without dependents discharged in such circumstances while serving overseas.

This action is in response to a letter dated June 27, 1977, from the Acting Assistant Secretary of the Air Force (Manpower and Reserve Affairs) requesting a decision with respect to questions which have arisen as a result of our decisions in 44 Comp. Gen. 724 (1965) and 55 Comp. Gen. 1183 (1976). Specifically the question concerns the shipment of household effects of members without dependents and the transportation of dependents and household effects for members with dependents when they are discharged under other than honorable conditions while stationed within the United States. The request was forwarded to this Office by letter dated July 5, 1977, from the Per Diem, Travel and Transportation Allowance Committee (PDTATAC Control Number 77-22).

The submission cites decisions at 55 Comp. Gen. 1183 and 44 Comp. Gen. 724 in which it was determined that regulations may be promulgated pursuant to 37 U.S.C. 406(h) (1970) to authorize transportation of dependents, household effects, and a privately owned vehicle (POV) for members with dependents (44 Comp. Gen. 724) and the shipment of household effects and a POV for members without dependents (55 Comp. Gen. 1183) when they are discharged under other than honorable conditions while stationed overseas. It is proposed to amend Volume 1 of the Joint Travel Regulations (1 JTR) to authorize transportation allowances in those situations

B-131632

where a member is discharged under other than honorable conditions while stationed in the United States.

In 37 Comp. Gen. 21 (1957) we determined that transportation of dependents and household effects of members of the Armed Forces discharged from the service under other than honorable circumstances may not be authorized at Government expense in the absence of express statutory authority therefor. In our decision 38 Comp. Gen. 28 (1958) we determined that transportation of dependents and household effects of members of the Armed Forces under such circumstances from overseas stations could not be accomplished under the unusual or emergency circumstances authorized in 37 U.S.C. 406(e). Subsequent to those decisions the Congress did enact specific statutory authority for the transportation of dependents and household goods from overseas by amending section 406 of title 37, United States Code, by adding subsection (h). However, that act, Public Law 88-431, approved August 14, 1964, 78 Stat. 439, was limited to those members serving at a station outside the United States or in Hawaii or Alaska. See 44 Comp. Gen. 724, at 726. Our decision in 55 Comp. Gen. 1183 extended the authority for transportation allowances in such circumstances to members without dependents but only from overseas stations.

The language of 37 U.S.C. 406(h) is clear and unambiguous on its face as being limited to "a member who is serving outside the United States or in Hawaii or Alaska", and we know of no legislative construction which would permit extending the authority of that subsection to members stationed within the United States or of any other statute which would authorize such transportation allowances.

It is our view that in the absence of any statutory authority for extending these transportation allowances to members inside the United States, the language as used in 37 Comp. Gen. 21 at 24 is still applicable, namely:

"While the transportation of dependents and household effects of members discharged from the service under other than honorable conditions, in the circumstances here involved, raises financial problems for the members, until there is statutory

R-131632

authority for the Government to assume the expenses of transportation on a different basis than is now authorized, it would seem that such expenses must be borne by the persons concerned. We believe that the current regulations \* \* \* express the intent of Congress, and that there is no authority for their amendment in the manner proposed."

Accordingly, the submitted question is answered in the negative.

Deputy

*W. K. Miller*  
Comptroller General  
of the United States