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PLM-11

DECISION

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

FILE: B-185465 DATE: August 10, 1979

M. Sgt.

MATTER OF: Master Sergeant Frederick L. King, USAF, Retired

[Claim for Reimbursement of Military

DIGEST: An armed forces member's dependents traveled by foreign air carrier] in 1974. Although the expense of the travel would have been fully refundable by the Government of Iran if paid by the United States Government, a claim for the use of the foreign carrier from the member may not be allowed since the travel predated enactment of the Fly America Act, Public Law 93-623, under which it would now be allowed. Travel on a foreign air carrier in 1974 was precluded by the law and regulations then in effect under which it was held in B-185465, May 7, 1976, payment was not authorized regardless of whether the United States would be reimbursed by a foreign government.

AGC 00035

This is in response to a request for reconsideration of our decision B-185465, May 7, 1976, which sustained the disallowance of a claim of Master Sergeant Frederick L. King, USAF, for reimbursement for travel of his dependents from Japan to Iran by commercial foreign air carrier incident to his permanent change of station (PCS). Upon reconsideration, the May ~~15,~~ 1976 decision is affirmed because under the regulations in effect at the time of travel the use of foreign flag air carriers was prohibited for the travel at Government expense of member's dependents.

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The reconsideration is based on a letter dated June 21, 1979, from the Chief, Traffic Management Division, Directorate of Transportation, Headquarters United States Air Force, forwarding an April 20, 1979 letter from Sergeant King.

At the time of the travel, September 7, 1974, the use of a commercial foreign air carrier by uniformed service personnel and their dependents was clearly prohibited by paragraphs M2150 and M7000 of Volume 1, Joint Travel Regulations (1 JTR), in the absence of an official determination that the travel involved could not have been performed on an aircraft registered under the laws of the United States.

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It is suggested, however, that the Comptroller General's guidelines for implementing the Fly America Act, 49 U.S.C. 1517 (B-138942, June 17, 1975), and decision B-138942, June 13, 1978 (57 Comp. Gen. 546) which authorized a change in the JTR, may provide some relief in Sergeant King's case.

Section 5 of Public Law 93-623, January 3, 1975, 88 Stat. 2102, 2104, amended the Federal Aviation Act of 1958 by adding section 1117, 49 U.S.C. 1517 (1976), known as the Fly America Act. That provision requires generally that Government air travel and transportation be performed on United States certificated carriers, and requires the Comptroller General to disallow expenditures from appropriated funds for air travel or transportation not performed on such certificated carriers. The Comptroller General's guidelines for implementing that law do not specifically cover the type of situation in Sergeant King's case. However, in 57 Comp. Gen. 546 it was held that the restriction on the use of foreign air carriers imposed by 49 U.S.C. 1517 was not applicable when such transportation was paid for in full by a foreign government, international agency or other organization either directly or by reimbursement to the United States.

By contractual agreement between the United States Government and the Government of Iran all funds expended in support of Sergeant King's case were recoverable from the Government of Iran. However, his dependents' travel was performed before the enactment of 49 U.S.C. 1517 and, thus, that provision was not controlling in his case. In this regard our decision in Sergeant King's case, B-185465, supra, was specifically referred to in the last paragraph of 57 Comp. Gen. 546, 548, supra, as follows:

> "Although in B-185465, May 7, 1976, we held that the general prohibition against the use of foreign flag carriers applied to those situations where the appropriated funds expended were recoverable in full from a foreign government, the travel involved in that case predated enactment of Public Law 93-623 and the decision was specifically predicated upon the then current provision of the Joint Travel Regulations implementing Senate Concurrent Resolution 53, 76 Stat. 1428, expressing the sense of Congress that travel by officers and employees on official business be performed on U.S. air carriers. * * *"

It is therefore apparent that there was no intent to modify or overrule B-185465, supra, by our decision 57 Comp. Gen. 546, supra, but rather to specifically point out that the travel involved in that decision predated the change in the law and the regulations. The decision in Sergeant King's case was based upon the law and regulations in effect at the time the travel was performed, and not upon the new law (49 U.S.C. 1517) which was not in effect at that time.

Our interpretation of the prohibition against payment of travel on foreign air carriers (prior to enactment of 49 U.S.C. 1517) when payment is reimbursed by a foreign government was similar to the rule still in effect prohibiting Government travel on foreign flag ships. That is, the prohibition applies regardless of whether the Government will be reimbursed by a foreign government. See 57 Comp. Gen. 546, 548, interpreting section 901(a) of the Merchant Marine Act of 1936, 46 U.S.C. 1241(a).

Accordingly, the holding in 57 Comp. Gen. 546 would not provide a basis for reconsideration of Sergeant King's case, and the disallowance of his claim is sustained.

R.F. Keller

Acting Comptroller General
of the United States