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**DECISION**



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

FILE: B-193879

DATE: October 18, 1979

MATTER OF: Junior enlisted service members'  
travel allowances

DIGEST: Although the Department of Defense Appropriation Act, 1979, appropriated funds which could be used for extension of travel and transportation entitlements to junior enlisted service members, the regulations authorizing the entitlements were issued under the existing authority of 37 U.S.C. chapter 7 (1976) and 10 U.S.C. § 2634 (1976). Therefore, the effective date of the junior enlisted travel entitlements is the effective date of the regulations, which may not be amended retroactively, and not the earlier effective date of the Appropriation Act.

The issue in this case is what is the appropriate effective date of junior enlisted service members' increased travel and transportation allowances--the effective date of authorizing regulations, the effective date of the act appropriating the money for the allowances, or the first day of the fiscal year. We hold that it is the effective date of the authorizing regulations.

The question was presented by letter from the Principal Deputy Assistant Secretary of the Air Force (Manpower, Reserve Affairs and Installations), and has been assigned control number 78-45 by the Per Diem, Travel and Transportation Allowance Committee.

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The Department of Defense Appropriation Act, 1979, Public Law 95-457, 92 Stat. 1231, contains funds appropriated by Congress for extension of certain travel and transportation entitlements to junior enlisted members, i. e., members in grade E-4 who have 2 years' service or less and members in lower grades. Although the services had the statutory authority under 37 U.S.C. chapter 7 (1976), and 10 U.S.C. § 2634 (1976) to authorize the travel and transportation allowances for junior enlisted members, they were effectively precluded from doing so until the entitlements had been funded by Congress. Because of uncertainties as to whether such funding would be provided and the extent of the additional funding, regulations could not be amended until the appropriation had been finally approved even though the appropriation once approved would provide funds for the increased allowances adequate for the whole fiscal year. The appropriation was approved by the President on October 13, 1978, and the new regulations were approved October 17, 1978.

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[Questions INVOLVING LEGISLATION AFFECTING ALLOWANCES]

B-193879

We are now asked whether we would object to amending the regulations to change the effective date of the entitlements from October 17, 1978, to: (1) October 1, 1978, the commencement of the fiscal year to which the Department of Defense Appropriation Act, 1979, applies; (2) October 13, 1978, the date the Appropriation Act was approved by the President, or; (3) any other date other than October 17, 1978.

While the Appropriation Act made funds available which could be used for junior enlisted travel, that act did not provide the authority to extend the allowances to junior enlisted members. That authority already existed under 37 U.S.C. chapter 7 (particularly §§ 404, 405, 406, 407, 409, 411) and 10 U.S.C. § 2634. It is understandable why the services chose to wait before exercising that authority until the funds had been approved to fund the additional entitlements. However, it was not until the legal authority was exercised by issuing the regulations prescribing the allowances that the entitlements became effective. Indeed, the additional funds are not specifically identified in the Appropriation Act nor is the junior enlisted program referred to there. Therefore, the effective date of the Appropriation Act is not the effective date of the entitlement. Rather, the entitlements accrued only upon finalization of the implementing statutory regulations on October 17, 1978. See Volume 1, Joint Travel Regulations, change 311, with applicable provisions effective October 17, 1978.

While regulations may be amended prospectively to increase or decrease rights under them, they may not be amended retroactively in the absence of obvious error. See 32 Comp. Gen. 315 (1953); 47 Comp. Gen. 127 (1967); and 56 Comp. Gen. 1014 (1977). No such error exists in this case. Accordingly, we conclude that, because the implementing regulations are controlling and did not take effect prior to October 17, 1978, we would be required to object to retroactively amending them to make them effective prior to that date.



For the Comptroller General  
of the United States