

DECISION



13558  
PART-11  
MISS here

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

[Entitlement to Reimbursement of Transportation Expenses]

FILE: B-195643

DATE: April 24, 1980

MATTER OF: Staff Sergeant Walter M. Moore, USMC  
Staff Sergeant Richard J. Gatz, USMC  
and Sergeant William J. Avnayim, USMC

DIGEST:

DLG-04490

1. Uniformed service members' dependents were moved at Government expense to designated places in the United States when the members were transferred to an overseas station to which dependents may not be moved at Government expense. Subsequently, the dependents joined the members at personal expense in the area of the overseas restricted duty station. The dependents were in the area with the members when they were notified of a permanent change of station to an overseas unrestricted duty station, but the dependents returned to the designated place in the U.S. prior to travel to the new duty station. The members may be reimbursed dependents' transportation expenses from the designated place to the new permanent duty station since the dependents had established a residence at the designated location to which they returned.
2. Transportation expenses are authorized for members of the uniformed services in connection with authorized leave between unrestricted and restricted tours of duty overseas. They may receive such allowances where their dependent wives were transported at Government expense to a designated place in the U.S., subsequently left the designated place and joined the member in the vicinity of the restricted overseas duty station at personal expense and were there when the member was notified of permanent change of station to

~~010001~~  
112167

a consecutive overseas duty station since the dependents had established residences at the designated location to which they returned and to which the members traveled to assist in disestablishing that residence.

#### Background

This case involves transportation expenses where Marine Corps members are transferred from the United States to a duty station overseas to which they are not authorized to bring their dependents at Government expense. In such cases the members are entitled to have their dependents travel at Government expense to a designated location in the United States at which they intend to establish residence while the members are on duty at the overseas station. Upon the members' transfer from that overseas station the members are ordinarily entitled to travel at Government expense to their dependents' designated location to help arrange for the dependents' move to the members' next duty station. Then both the members and their dependents are entitled to travel at Government expense from the designated location to the next duty station.

In the cases presented the dependents traveled at Government expense to their designated location in the United States and then later traveled at their personal expense to the area of the members' overseas duty stations where they remained for substantial periods of time. Then, either shortly before or at the time of the members' transfer to their next duty station, the dependents returned to their designated locations in the United States where they were joined by the members. After periods of leave the members and their dependents then traveled to the new duty station.

Two issues are involved here. First, may the members be reimbursed for their dependents' transportation expenses from the designated place to the new duty station upon the members' permanent change of station (PCS), or is their entitlement limited to their dependents' travel from

the overseas duty station directly to the next duty station. The second question is whether in such circumstances the member would be entitled to his own transportation at Government expense from his overseas station to the designated place and then to the new duty station, or whether he is limited to transportation directly from his old to his new duty station.

The issues arise from a request by the Disbursing Officer, Marine Corps Air Station, Kaneohe Bay, Hawaii, regarding the claims of Staff Sergeant Walter M. Moore, USMC; Staff Sergeant Richard J. Gatz, USMC; and Sergeant William J. Avnayim, USMC, for payment of dependents' travel pursuant to paragraph M7005, Volume 1, Joint Travel Regulations (1 JTR), and payment of each member's travel pursuant to paragraph M5501 of 1 JTR in the circumstances described. The request was assigned Control No. 79-25 and forwarded to this Office by the Per Diem, Travel and Transportation Allowance Committee.

Each of the members, noncommissioned officers of the United States Marine Corps, were assigned on PCS orders to Okinawa, Japan, a duty station to which they were not authorized to bring their dependents at Government expense. Reimbursement was provided for their dependents' travel to places in the continental United States designated by the members where their dependents would reside. In each case at least some household effects were either located at or in the vicinity of the designated place. In each case, the dependent (wife), after having traveled to the designated place, later joined her husband in Okinawa at personal expense. Each of the parties occupied quarters off base in Okinawa at no expense to the Government. The family separation allowances were terminated upon the dependents' arrival in Okinawa. Each dependent left Okinawa shortly before or at the same time the member began travel in compliance with his next PCS order (which was to Hawaii) and returned to her respective designated place. Each of the members in compliance with the PCS orders departed Okinawa and returned to the designated place before reporting to the new duty station in Hawaii.

Dependents' Travel Entitlements

Travel and transportation allowances for dependents of members of the uniformed services are governed by 37 U.S.C. 406 (1976). Implementing regulations for these travel and transportation entitlements are found in 1 JTR.

Paragraph M7005-1 of 1 JTR provides that when a member is transferred by PCS orders to a restricted area, transportation of dependents is authorized from the old permanent station to an appropriate destination. In such circumstances, when the old permanent duty station is located in the United States, transportation is authorized pursuant to paragraph M7005-4-1 to any place in the United States the member may designate.

During the time in question, when a member of the uniformed services was subsequently transferred by PCS orders from a restricted assignment to an unrestricted assignment, transportation of dependents was authorized under paragraph M7005-4-1 from the place at which dependents are located on receipt of PCS orders or from the place to which dependents were moved at Government expense, whichever results in the lesser entitlement, to the member's permanent station.

In two earlier decisions we ruled on transportation claims involving dependents located at a place other than the designated place when PCS orders were received by the member or where the restrictions on dependents' presence at the duty station were removed. In each of these cases, however, there had been a clear disestablishment of the residence at the designated place with no intent of returning, and thus they are distinguishable from the present claims.

In one of those cases, B-166438, September 25, 1968, the dependents were transported to Great Falls, Montana, the designated place, when the member received an overseas assignment. The dependents departed Great Falls

B-195643

after a little more than 1 month's residence and moved to Lake Worth, Florida, where they were located when the member received PCS orders to Hamilton Air Force Base (AFB), California. The facts in that case reveal that the residence at the designated place, Great Falls, had been completely disestablished with no intent of the member or his dependents to return. However, since the distance from the designated place was a lesser distance than the place where the dependents were located when PCS orders were received, transportation was authorized based upon the distance from Great Falls to Hamilton AFB.

In B-157013, September 28, 1966, the dependents had departed the designated place of El Paso, Texas, and traveled to Olean, New York, to await a port call for travel to Germany. Transportation expenses from El Paso to Olean were denied since the dependents were in Olean when they received an authorization to travel to the overseas station. In that decision we stated:

"\* \* \* Under the plain terms of the regulations if a member's dependents are not at the designated place when the restriction against their travel to his station is removed, their transportation is authorized from the designated place or the place they are then located, whichever results in the lesser amount, to the member's current station. The fact that the absence from the designated place may only be temporary, as for a visit, affords no basis to allow a greater amount."

If a literal interpretation of the last sentence of the above-quoted decision is extended to the limit, dependents could not leave their designated place for an overnight visit without jeopardizing their travel entitlement.

If the spouses had joined their husbands for a short visit of a few days or a week rather than several months but had been in Okinawa when the member's PCS orders were

B-195643

received for Hawaii, the literal interpretation of the language of that decision would mean that they were "located" in Okinawa and therefore their transportation entitlements should be calculated from Okinawa to Hawaii. It is now our view that "located" as used in M7005, 1 JTR, means something more than a temporary visit and to the extent that B-157013 determines otherwise that decision is modified and will no longer be followed.

In each of the present claims, designated location was certified to by the member as the bona fide residence of his dependent and was the place to which the dependent had been transported at Government expense when the member was assigned to the restricted station. The dependents established residence at the designated place when their household effects were shipped there and the record discloses that each of the wives spent part of the 13 months of her husband's Okinawa tour of duty at the designated place. While each of the dependents was residing with the member in Okinawa when notification of the PCS was received, the residences at the designated locations in the United States had not been disestablished and the dependents returned there for substantial periods of time before going on to the next duty station.

Therefore, in these circumstances the members are entitled to transportation of their dependents at Government expense from their designated locations to the next duty station in Hawaii.

#### Members' Travel Entitlements

The members' travel to the designated locations and then to Hawaii is governed by 37 U.S.C. 411b (1976). That provision authorizes transportation at Government expense for members stationed overseas who are ordered to make a PCS to another overseas station (including Hawaii and Alaska) who travel in connection with authorized leave from the last duty station to a place approved by the Secretary concerned and from that place to his designated post of duty, if either his last duty station or designated post of duty is a restricted area in which dependents are not

B-195643

authorized. Implementing regulations for this provision are found in chapter 5, Part J of 1 JTR.

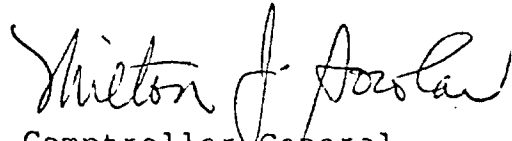
One of the purposes of this law, as expressed in House Report No. 93-711, December 11, 1973, 93d Congress, was to provide travel and transportation allowances between consecutive overseas assignments in order that servicemen might return to the location of their dependents and assist in the packing and moving of their families, household and personal effects. See also 55 Comp. Gen. 284, 286 (1975). In the present cases, while the members' dependents resided with them during a part of the Okinawa assignments, the members were still faced with the necessity of arranging the disestablishment of the residence which had been established at the designated place in the United States to which their dependents had returned, and then arranging the move to Hawaii. It does not appear that the member's status was changed materially with regard to preparing for the consecutive overseas tour whether his wife was in the vicinity of the restricted station for 7 to 10 months out of a 13-month tour as in these cases, or if they had only visited for a shorter period and then returned to the designated place.

Therefore, in these circumstances the members may be reimbursed for their own travel to the designated locations and then on to Hawaii pursuant to 37 U.S.C. 411b.

#### Conclusion

Accordingly, the vouchers on each of the three claims submitted are being returned for payment if otherwise correct.

In order to avoid confusion in future cases, if it is considered desirable that dependents who travel at their own expenses to a restricted area are to be considered as having "located" there for purposes of transportation entitlements on a subsequent PCS, the services may wish to amend the regulations to specifically so state.



For the Comptroller General  
of the United States