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DECISION



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

FILE: B-209105

DATE: April 22, 1983

MATTER OF: Lieutenant Colonel Wayne C. Boyd, USA

DIGEST:

Military member is not entitled to the transportation expenses incurred by his dependent daughter when she traveled to his permanent duty station to assume residence with him because she was not in his custody and control on the effective date of his assignment to that post.

This action responds to a request submitted by Captain Lewis Singleton, a finance and accounting officer of the Department of the Army, for an advance decision concerning the entitlement of Colonel Wayne C. Boyd to the travel expenses incurred by his dependent daughter when she traveled from Albuquerque, New Mexico, to Seoul, Korea, to assume residence with him. The request was assigned control number 82-21 by the Department of Defense Per Diem, Travel and Transportation Allowance Committee. Because Colonel Boyd's daughter was not under his legal custody when he was transferred to Korea, he is not entitled to the travel expenses claimed.

Colonel Boyd was assigned to permanent duty at Seoul, Korea, in July 1980. At that time his daughter, Wendy Jo, was in the legal custody and control of her mother, pursuant to a custody decree entered on March 21, 1977, in the District Court of McKinley County, New Mexico. Colonel Boyd obtained joint custody of his daughter by order of the court on October 5, 1981. She then traveled to Seoul on November 14 and 15, 1981, to assume residence with her father.

Travel of a member's dependents is governed by Chapter 7, Volume I of the Joint Travel Regulations (1 JTR), promulgated pursuant to 37 U.S.C. § 406 (1976). Paragraph M7000 of 1 JTR pertains to the transportation of dependents upon a member's permanent change of station. Subparagraph 20 of paragraph M7000 precludes payment of the transportation expenses of dependent children if they were not under the legal custody and control of the member on the effective date of his permanent change of station.

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Since Colonel Boyd did not obtain legal custody of his daughter until after the permanent change of station, no entitlement exists for payment of her travel to join him. See Matter of Kimmel, B-186308, JULY 22, 1976.

Colonel Boyd has objected to the Army's denial of payment on the basis that he was advised by finance officials that he would be reimbursed for the claimed travel expenses and that he received orders authorizing his daughter's travel. Apparently the information he received was based on the assumption that he had custody or joint custody and control of his daughter at the time he was assigned to duty in Korea. Nevertheless, the fact that he may have been misinformed by Army officials provides no legal basis for payment of a claim for which there is no statutory authority. See Matter of Bravo, B-197384, August 12, 1980.

While we can appreciate the inconvenience this error may have caused Colonel Boyd, it is a well-settled rule of law that the Government cannot be bound by the erroneous advice or actions of its agents. Matter of Elder and Owen, 56 Comp. Gen. 85, 89 (1976), and Matter of Pradarits, 56 Comp. Gen. 131, 136 (1976).

Accordingly, Colonel Boyd's claim for his daughter's travel expenses may not be paid.

for *Harry R. Chan Clave*
Comptroller General
of the United States