

DECISION



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

27061

FILE: B-212149

DATE: December 16, 1983

MATTER OF: Lieutenant Colonel Sheldon A. Goldberg, USAF

- DIGEST:**
1. The dependent of a service member stationed overseas may be authorized early return to United States at Government expense to attend college only if conditions in the Joint Travel Regulations are met and if the travel is authorized in advance. If not, the dependent may travel on space-available transportation under Department of Defense regulations. If the service member does not seek authority for early return and is not able to take advantage of space-available travel, no payment for returning the dependent to college is authorized.
 2. The dependent of a service member was authorized travel from Tacoma, Washington, to Maxwell Air Force Base, Alabama, in connection with the member's permanent change of station from West Germany, to Maxwell. Since the dependent was already in the United States, and had attained the age of 21 while in the United States, the orders may not be considered as authorizing travel as a dependent at Government expense.

Lieutenant Colonel Sheldon A. Goldberg, USAF, requests reconsideration of our Claims Group's May 18, 1983, denial of his claim for payment of travel expenses for his dependent son from Tacoma, Washington, to Maxwell Air Force Base, Alabama. The claim must be disallowed since no authority exists for dependent travel from a location other than the member's former station outside the United States to the new station inside the United States when the dependent, because of age, was no longer eligible as a dependent at the time the travel was performed.

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Colonel Goldberg, while assigned to duty in Hamburg, West Germany, requested and received travel orders dated August 2, 1978, authorizing his son space-available travel to the United States in order to attend college. He and his family had been overseas in West Germany since January 2, 1972. After a delay of over a week in attempting to obtain a flight at Rhein-Main Air Force Base, he paid for his son's travel by commercial carrier. While in school, his son attained the age of 21 on September 12, 1980. Colonel Goldberg's orders dated May 21, 1981, transferring him from Hamburg to Maxwell Air Force Base, Alabama, authorized his son travel at Government expense from Tacoma, Washington, to the new duty station, but the travel was not performed until December 22, 1981.

Colonel Goldberg, in his original request for payment, contended in essence that since his son was transported to Europe and within Europe pursuant to official orders at Government expense, he should be compensated for the expense of returning him to the United States or for bringing him from college to his new duty station in the United States as authorized in his travel orders. Payment was denied since travel of his son from West Germany to the United States was not incident to a permanent change of station and space-available travel was approved at the time his son performed travel.

In his appeal, Colonel Goldberg contends that it was necessary for his son to return to the United States in order to attend college and that even though requirements for travel at Government expense under paragraph M7103-2, item 5, of Volume 1, Joint Travel Regulations, were met, he was advised not to use that entitlement.

The entitlement to the transportation of dependents between the United States and overseas at Government expense is provided by law, which generally provides that such transportation is authorized when the member is ordered to make a change of permanent station. Ordinarily a member is not entitled to travel and transportation expenses for a return trip to the United States at Government expense unless

it is in connection with the member's change of permanent station. See 37 U.S.C. 406 (1976).

While limited exceptions to this rule exist, generally these exceptions are not available to provide transportation to a member's dependents at Government expenses for the purpose of returning to the United States from overseas to attend college. See 37 U.S.C. 406(e) and (h). Chapter 7, Part C, Volume I, of the Joint Travel Regulations particularly paragraph M7103-2, item 5; and Matter of Taylor, 57 Comp. Gen. 343 (1978). Although Colonel Goldberg believes that he would have been eligible for travel under that authority, he did not request or receive prior authorization and is precluded by the terms of paragraph M7103-1 from having that travel retroactively approved.

However, Colonel Goldberg's son, if engaged in full-time undergraduate study in the continental United States, was permitted space-available transportation under Department of Defense Regulation 4515.13R, paragraph 4-5. See 57 Comp. Gen. 343 (1978). That type of transportation was authorized, although he was unable to avail himself of this benefit because of waiting lists and as a result paid for commercial transportation himself.

Thus, Colonel Goldberg's son was already in the United States at the time of his permanent change of station. Additionally, he reached 21 years of age while he was in the United States.

In this regard, a member's unmarried child, once he or she attains 21 years of age, may not be considered a dependent for travel and transportation entitlements. While an exception is made for dependents who were transported at Government expense to a duty station outside the United States and attain 21 years while overseas, no exception exists for dependents who reach 21 years of age while residing in the United States. See 1 JTR Appendix J (definition of dependent) and 1 JTR paragraph M7012.

Although Colonel Goldberg was authorized transportation of his son from Tacoma, Washington, to his duty station at

6-12
B-212149

Maxwell Air Force Base, Alabama, on his change-of-station orders dated May 21, 1981, that travel should not have been authorized under applicable law and regulations and, therefore, he may not be reimbursed expenses for that travel.

Accordingly, the action of our Claims Group disallowing Colonel Goldberg's claim is sustained.

for *Milton J. Aoulan*
Comptroller General
of the United States