

COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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H-159985

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OSAP AND HASLY
Coronado, California 92118

Dear Mr. ██████████

Further reference is made to your letter requesting review of the settlement of November 9, 1965, which disallowed your claim for reimbursement for travel of your dependents from East Meadow, Long Island, New York, to San Diego, California.

By orders No. LPD2-1, dated May 11, 1963, you were transferred from U. S. Naval Receiving Station, Brooklyn, New York, to duty on board the U. S. S. Vancouver (LPD-2) at Brooklyn upon commissioning. You say that the vessel was commissioned at that time and assigned to San Diego, California, as home port, and that it departed Brooklyn for San Diego in July 1963. In that month you submitted a claim for reimbursement for travel of your dependents (wife and three children) from East Meadow, Long Island, New York, to San Diego, California, stating that travel began on June 29, 1963, was completed on July 7, 1963, and was actually performed between those points. On the basis of your statement that the travel had been performed between the points claimed you were paid \$290.79 on D.O. Voucher No. 127, dated August 2, 1963.

Upon audit of the disbursing officer's account an exception was taken to the payment for the reason that an examination of class Q allotment checks for June and July 1963, shows that they were mailed to Kenosha, Wisconsin; that they were endorsed by your wife, Annette, and negotiated in Kenosha, on July 1 and 31, 1963, respectively, thus indicating your dependents had not established a residence in San Diego. As the result of the exception the sum of \$290.79 was collected from you by checkage. You then filed a second claim for reimbursement for travel of your dependents from East Meadow to San Diego saying that since your wife could not remain in San Diego long enough to establish residence but had to return to Wisconsin, travel was again performed in September 1963. In support of this claim and to show that residence was established in San Diego you submitted canceled personal checks for payment of rent and utilities issued on various dates from September 23, 1963, to November 15, 1963. Such evidence does not support your statement that travel was performed in

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June and July 1963 or that residence in San Diego was established at that time. Your claim was disallowed by the settlement mentioned above because of the conflicting statements as to residence and dates of travel of dependents.

In your present letter you say that in June 1963, your dependents departed East Meadow, Long Island, New York, for San Diego, California, with the intention of establishing a residence. However, because of the operational schedule of the U.S.S. Vancouver (LFD-2), which included 4 weeks at Norfolk, Virginia, your dependents visited with your wife's parents in Kenosha, Wisconsin, en route from July to September and arrived in San Diego in September 1963. Thus, it is apparent that when you originally claimed and were paid for travel of dependents from East Meadow to San Diego they had not traveled to San Diego in June and July but had traveled only a lesser distance to Kenosha.

Travel and transportation allowances for transportation of dependents upon permanent change of station are governed by the Joint Travel Regulations promulgated pursuant to 37 U.S.C. 406. Paragraph 47000 of the regulations provides for transportation of dependents upon permanent change of station, except that such expenses may not be considered an obligation of the Government (paragraph 47000-12) for any travel of dependents between points otherwise authorized in the regulations to a place at which they do not intend to establish a residence. Reimbursement of travel expenses of dependents for pleasure trips or for purposes other than with the intent to change the dependents' residence is not authorized. And payment of a travel allowance for travel of dependents is authorized in otherwise proper cases only after the travel has been performed. If your second claim represents a correct statement of dependents' travel incident to the orders of May 11, 1963, it is apparent that your first claim was incorrect since your dependents had not traveled to San Diego at the time you made claim for such travel.

Claims against the United States must be based on true facts and it is incumbent upon the claimant to furnish evidence satisfactorily establishing the clear liability of the United States to pay the claim. Where a claim is of doubtful validity it is the practice of this Office to deny payment and leave the claimant to his remedy in the courts under the principles of Longwill v. United States, 17 Ct. Cl. 288, and Charles v. United States, 19 Ct. Cl. 316. A claim in the form of a recoupment for any or all of the amount recouped because of an erroneous payment on a voucher resulting from

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a misrepresentation of fact is viewed as a matter which should be left to the Court of Claims for final resolution even though the claim apparently is based upon the true facts. Compare Kawen Soap Products, Inc. v. United States, 129 Ct. Cl. 619. See decision of November 3, 1961, H-105630, 61 Comp. Gen. 285, copy enclosed.

Accordingly, the settlement of November 9, 1965, which disallowed your claim for the amount collected from you was correct and is sustained.

Sincerely yours,

Frank H. Weitzel

Comptroller General
of the United States

Enclosure

CLAIMS
Kawen Soap
Products
Inc.

TRANSPORTATION
Military personnel
False transportation claim effect