

DECISION



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

983

FILE: B-186632

DATE: OCT 28 1976

MATTER OF:

, EN2, USN

DIGEST: Navy member ordered from last permanent duty station to chosen separation activity for purpose of separation, extended enlistment at separation station without break in service and traveled to new permanent duty station designated in subsequent transfer order. Upon subsequent transfer order, tantamount to cancellation of original order, he is entitled to travel allowance for his and his dependents' travel, including dependents' travel from last permanent duty station via place from which he was ordered to active duty to new permanent duty station. 1 JTR, paras. M4156 and M7051.

This action is in response to a request for advance decision dated March 15, 1976, from W.R. Thompson, Disbursing Officer, Naval Air Station, New Orleans, Louisiana, concerning entitlement of , to personal and dependents' travel allowances in connection with the member's enlistment extension subsequent to receiving orders directing travel by the member and his dependents in connection with his separation from active duty. This request was assigned Control number 76-13 by the Per Diem, Travel and Transportation Allowance Committee, which forwarded it to this Office by endorsement dated May 27, 1976.

The record shows that the member was ordered to active duty on January 28, 1972, at Little Rock, Arkansas, with a home of record listed as Mensley Grant, Arkansas. His active obligated service was to expire on January 27, 1976. By Bureau of Naval Personnel Standard Transfer Order (STO) No. 1223/75, dated November 24, 1975, he was authorized to travel from his permanent duty station at Holy Loch, Scotland, to Naval Air Station (NAS) Memphis at Millington, Tennessee, with 20 days leave authorized and a reporting date of December 17, 1975, for the purpose of separation. The order contained the following endorsement:

"AT YOUR REQUEST YOU ARE AUTH TO REPORT TO N.A.S. MEMPHIS, TENN. VICE NAVSUPPACT PHILLY, PA. WITH THE UNDERSTANDING THAT YOU WILL BE ENTITLED TO NO

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**EXPENSE IN EXCESS OF THAT WHICH IS REQUIRED
TRAVEL TO APPROPRIATE ACTIVITY NEAREST PORT
OF DEBARKATION AND THEN TO HOME OF RECORD."**

The member commenced travel on November 26, 1975, and reported to NAS Memphis on December 17, 1975. It appears from the information presented that his dependents commenced travel at the same time and traveled to Little Rock, Arkansas, the place at which the member was ordered to active duty.

It is not clear from the information presented on what date the member extended his enlistment. However, it appears that he executed the extension agreement between December 17, 1975, and January 4, 1976, the date Standard Transfer Order No. J-022-75 was prepared directing him to travel from NAS Memphis to his new duty assignment at NAS New Orleans, with 10 days delay in reporting authorized. He complied with that order and reported to NAS New Orleans, New Orleans, Louisiana, on February 20, 1976.

The member has submitted a voucher for his personal travel from Holy Loch, Scotland, via Glasgow and London to New York, for travel from New York to NAS Memphis, and for travel from NAS Memphis to NAS New Orleans. He has also submitted a voucher for his dependents' travel, which differs from his own in that it additionally includes their travel from New York to Little Rock, Arkansas, and from Little Rock to NAS Memphis. The Disbursing Officer, concerned with the propriety of making payment on the claim because the member was never separated from the Service, questions the member's and dependents' travel entitlements upon his enlistment extension and subsequent issuance of permanent change of station (PCS) orders to NAS New Orleans.

Subparagraph 1 of paragraph M4157 of Volume 1, Joint Travel Regulations (1 JTR), implementing 37 U.S.C. § 404(a)(3) (1970), entitles a member who is so authorized to travel from his last permanent duty station to a separation station of his choice, and from there to the place from which he was called to active duty with travel allowances not to exceed those which would have been allowed had he been ordered to the separation activity and separated there. Although the member was authorized to proceed to NAS Memphis in lieu of Philadelphia, Pennsylvania, the nearest port of debarkation, and then to his home of record, paragraphs M4156 and M7031, 1 JTR, are controlling in this case since the

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member extended his obligation without a break in service. Case 4 of paragraph MA156, JTR, implementing 37 U.S.C. 406a (1970), provides in pertinent part:

"A member who travels under permanent change-of-station orders which are canceled or modified for the convenience of the Government or in circumstances over which the member has no control while en route will be entitled to allowances as follows:

* * * * *

2. if the orders are modified to name a new permanent duty station, allowances for the distance travel is performed from the old permanent duty station to the point en route (including the leave point, if applicable) at which the notification of the change was received and thence to the last-named new permanent duty station, not to exceed the distance from the old permanent duty station to the last-named new permanent duty station via the first-named new permanent duty station."

* * * * *

Initially, the regulation requires that the member travel under permanent change-of-station (PCS) orders. Although the submission questions whether STO No. 1223/75, November 24, 1975, may be so characterized because it authorizes travel for the purpose of separation rather than for active duty, a PCS is generally defined to include the change from the last permanent duty station to home upon discharge or release from active duty. See 1 JTR, Appendix J, and 53 Comp. Gen. 55/57 (1973). While it is not clear from the record, the issuance of STO No. J-022-75, January 4, 1976, which named as a new permanent duty station NAS New Orleans, apparently had the effect of superseding the previous order and was, therefore, tantamount to a cancellation of STO No. 1223/75. Notwithstanding the fact that the member effected the change in his orders by executing the enlistment extension, the Navy was not obligated to accept his extension; it ostensibly

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did so primarily for the convenience of the Government, i.e., because his continued service on active duty was in the Government's interest. 33 Comp. Gen. 551 58, supra; cf. 44 Comp. Gen. 6551 656-57 (1963). The point en route at which he received notification of the change was NAS Memphis, subject to the restrictive endorsement contained in STO No. 1223/73. The member is therefore entitled, pursuant to 37 U.S.C. § 406a (1970) and paragraph M41561 1 JTR, to travel allowances for the distance travel was performed from his last permanent duty station, Holy Loch, Scotland, to Memphis NAS, not to exceed the cost of such travel from Holy Loch via Philadelphia, Pennsylvania, to his home of record or the place from which he was ordered to active duty. He is also entitled to travel allowances for his travel from Memphis NAS to his new permanent duty station, New Orleans, NAS.

Petty Officer entitlement to payment for his dependents' travel is based upon the rights secured to him under his orders incident to his travel, absent contrary provisions of law. 46 Comp. Gen. 852, 854 (1967). Because the issuance of STO No. J-022-73 operated as a cancellation of the previous orders issued in anticipation of his separation from the service, his dependents' entitlement to transportation is controlled by paragraph M70511 1 JTR, which provides as follows:

"When orders directing a permanent change of station are modified after the date travel of dependents under the orders is commenced, circuitously or otherwise, and a new permanent station is designated, or the permanent change-of-station orders are canceled or revoked, transportation of dependents at Government expense is authorized for travel performed for the distance from the place dependents commenced travel, to the place at which they received notification of orders, and thence to the new station or return to the old station, not to exceed the distance from the old station to the first-named station and thence to the last-named station or return to the old station."

Incident to STO No. 1223/73, his dependents had traveled from the member's old permanent duty station to the place from which he was ordered to active duty, Little Rock, Arkansas.

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From the vouchers submitted it appears that the dependents traveled from Little Rock to Memphis, and then to New Orleans at the time of his extension and the issuance of the orders assigning him to NAS New Orleans.

We examined the related question of dependents' travel entitlement when a member's retirement orders are cancelled in our decision, 53 Comp. Gen. 55, 37-58, *supra*, in which we determined that:

"The legislative history of 37 U.S.C. 406a * * * reasonably supports the view that its benefits are to ~~mean~~ when orders that direct a permanent change of station (including orders directing release from active duty or retirement) are canceled or modified before their effective date for convenience of the Government and/or in circumstances over which the member has no control."

On this basis we held that the member was entitled to allowance for his dependents' travel from his last permanent duty station to his home of selection, and from there to his new permanent duty station, notwithstanding the fact that he had requested the cancellation of his retirement orders.

In applying the above to the circumstances of the instant case, we conclude that the dependents' travel entitlements are restricted to the allowances payable from his last permanent station, Holy Loch, Scotland, to Little Rock, Arkansas, and thence directly to his new permanent station, NAS New Orleans. No authority exists for payment for the dependents' travel from Little Rock to NAS Memphis, which the travel voucher indicates was performed prior to departure for NAS New Orleans.

Accordingly, the vouchers which are being returned with supporting papers may be certified for payment if amended in accordance with the above, if otherwise correct.

R.F. KELLER

(Deputy) Comptroller General
of the United States

TRAVEL ALLOWANCE

Military personnel
Enlistment extension, discharge,
reenlistment, etc.

MILITARY PERSONNEL

Separation

Enlistment extension at separation
point

Travel allowance entitlement

ORDERS

Cancelled, revoked, or modified

Travel expenses

Military personnel