



DECISION

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

FILE: B-186397

DATE: OCT 14 1976

MATTER OF:

DIGEST:

The right to make a home of selection upon retirement for purposes of travel, transportation of dependents and household goods at Government expense to the home of selection is a right which is to be exercised by the member and the selection of a home as contemplated by the statute may not ordinarily be made by a dependent spouse.

This action is in response to a letter dated April 9, 1976, of Mrs. [redacted] wife of Technical Sergeant [redacted] USAF, Retired, SSN [redacted], which, in effect, constitutes an appeal from a settlement dated April 6, 1976, by the Claims Division of this Office, which disallowed her claim for reimbursement for expenses incurred as the result of travel by the claimant and her children from Hawaii to California, for living expenses, for storage and shipment costs for household effects and reimbursement for damages to household goods while in storage, incident to the retirement of the member from the Air Force in 1971.

The record shows that the claimant's husband, Technical Sergeant [redacted] by Special Order Number AC-37493, was retired from the Air Force effective February 1, 1971, under the provisions of 10 U.S.C. 8914. By Special Order AA-4070, dated December 15, 1970, the dependents of the member were authorized Government transportation from Berlin, Germany, to a home of selection, to commence on or after the date of the member's retirement, but within 1 year thereof. The record further shows that the claimant and her three dependent children, unaccompanied by the service member, traveled by Military Airlift Command (MAC) from Berlin, Germany, to Honolulu, Hawaii, on or about April 6, 1971, their household goods having been shipped from Germany to nontemporary storage in Bayonne, New Jersey, on or about March 31, 1971.

The claimant contends that she and her dependent children were en route to New Zealand claiming that place had been selected by her as the family home of selection upon the retirement of her

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husband by reason of a power of attorney given to her by the member to make the selection. Apparently, at the time the travel was performed the claimant and the member were legally separated. The claimant further contends that upon arrival in Hawaii, MAC personnel refused to permit her and her dependents to proceed to New Zealand by MAC transportation, in the absence of specific orders authorizing such travel since there was nothing of record to show New Zealand to be the designated home of selection by the member. Additionally MAC personnel would not authorize Government transportation back to the continental United States (CONUS) and the claimant and her dependents were forced to remain in Hawaii for a protracted period, eventually traveling from there to California at their own expense.

The record also shows that their household goods were held in nontemporary storage from approximately May 1, 1971, until February 1, 1972, and then were moved at the claimant's request to the member's mother's home in New York State. It is claimed that the household goods were destroyed after delivery due to inadequate storage conditions at that location, as a result of which the claimant seeks reimbursement from the Government.

Travel and transportation entitlements of members of the uniformed services and their dependents are provided for in title 37, United States Code, and are implemented in accordance therewith by Volume 1 of the Joint Travel Regulations (JTR).

Section 404, title 37, United States Code, provides in pertinent part:

"(a) Under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances for travel performed or to be performed under orders, without regard to the comparative costs of the various modes of transportation—

* * * * *

"(3) upon separation from the service, placement on the temporary disability retired

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list, release from active duty, or retirement, from his last duty station to his home or the place from which he was called or ordered to active duty, whether or not he is or will be a member of a uniformed service at the time the travel is or will be performed * * *

* * * * *

"(c) Under uniform regulations prescribed by the Secretaries concerned, a member who—

"(1) is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10; or

"(2) is retired with pay under any other law * * *

may, not later than one year from the date he is so retired * * * except as prescribed in regulations by the Secretaries concerned, select his home for the purposes of the travel and transportation allowances authorized by subsection (a) of this section."

Section 406, title 37, United States Code, provides that a member of a uniformed service who is ordered to make a change of permanent station, including home of selection travel on retirement, is entitled to the transportation of his dependents (subsection (a)), and to the transportation of his baggage and household effects (subsection (b)) as prescribed by the Secretaries concerned (subsection (c)).

Paragraph M4158 of 1 JTR, implementing section 404 of title 37, United States Code, provides in subparagraphs 1a and 2a that a member on active duty who is retired may select his home and be entitled to receive travel and transportation allowances thereto from his last duty station. Subparagraph M7010-1a contains similar provisions regarding the travel of dependents to the home selected by the member and paragraph M8260-1 authorizes the shipment of household goods to such location at Government expense.

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The purpose of the before-mentioned statutes and regulations is to authorize travel at Government expense for a member and his dependents and transportation of household goods to the place where he goes to reside following retirement. Unless that place has been selected and travel to it for that purpose has been performed, no right to travel and transportation allowances accrues. See 36 Comp. Gen. 774 (1957). In this connection, it is to be noted that the entitlement to receive travel and transportation expenses upon retirement is a right which accrues to the member only; no right accrues to his dependents directly. Payment for dependent travel and transportation of household goods must be based on the member's entitlements. Therefore, where a home has been selected and the dependents travel to that location, but the member travels to another location and remains there (B-183344, May 18, 1976), or the member fails to perform travel to the home of selection within the 1-year period for the purpose of remaining there (52 Comp. Gen. 242 (1972)), payment of travel and transportation allowances of the member and his dependents as well as payment for shipment of household goods to that designated location is not authorized. See also 54 Comp. Gen. 1042 (1975) and B-165476, July 23, 1976.

In the present case, the claimant's asserted basis for entitlement is that since she holds a power of attorney executed by the member, her actions selecting a home and traveling thereto are as though the member performed these acts. We are not persuaded by that assertion. No such power of attorney is included in the record before us. In any event, as a general rule, under the law granting home of selection entitlements, such rights as exist are personal in the member. While the law recognizes an exception in the case of a member who dies after retirement within the 1-year limitation period and has failed to exercise his home of selection rights, in which case such rights will accrue to and be exercised by his surviving dependents, that is not the case here. In this case the member was living but did not travel with his dependents. Although the record shows that attempts were made to contact the member to determine what, if any, home of selection he made, apparently those attempts were unsuccessful. There is no indication in the record that the member ever selected New Zealand as his home and traveled there, prerequisites for entitlement to home of selection travel and transportation allowances. See 1 JTR paragraphs M4158 and M7019.

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With regard to the transportation furnished the dependents and the shipment, storage, and reshipment of their household goods, under 37 U.S.C. 406(h) the Secretary concerned does have authority to authorize the movement of a member's dependents, their baggage and household goods to an appropriate location in the United States. Therefore, we will not object to the transportation furnished the member's dependents or for the transportation and storage of the household goods already furnished.

As to the claimed entitlement to be reimbursed for the damage to the household goods which occurred after they arrived at the destination designated by the claimant, responsibility of the services for the proper handling of household goods terminates no later than delivery of the goods to the designated destination and acceptance of such goods. It appears from the file that the goods were received by the claimant's mother-in-law in good order. Therefore, there is no legal basis upon which a claim for damage to the goods thereafter may be predicated.

While it is unfortunate that _____ may not have been fully aware of the limitations placed on travel and transportation allowances by law and regulations, based on the record before us there appears to be no further entitlement in her case.

Accordingly, the action taken by the Claims Division disallowing Mrs. Schwab's claim is sustained.

Documents submitted by _____ are being returned as requested.

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TRANSPORTATION

Dependents

Military personnel

Home of selection

Selection by member's spouse

TRAVEL EXPENSES

Military personnel

Retirement

To selected home

Dependents location

MILITARY PERSONNEL

Retirement

Travel and transportation entitlement

Dependents