

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D. C. 20548

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NOV 04 1975

FILE: B-182440

DATE: NOV 4 1975

MATTER OF: Dependent travel allowance and dislocation
allowances - , USMC

DIGEST: Member with permanent change of station from San Diego, California, to Okinawa, Japan, and thereafter from Okinawa to Camp Pendleton, is entitled to transportation of dependent at Government expense and to dislocation allowances incident to dependent travel to Newnan, Georgia, and from there to Oceanside, California, and to household goods transportation from Newnan to Oceanside, since Newnan was a designated location where his dependent established a residence during the interim period.

This action is in response to a letter dated September 11, 1974, from the Disbursing Officer, 1st Marine Division, FMF, Camp Pendleton, California 92055, forwarded by Headquarters United States Marine Corps, requesting an advance decision as to whether Major , is entitled to reimbursement for travel of his dependent wife, Mrs. , from San Diego, California, to Newnan, Georgia, and a dislocation allowance, in the circumstances described. The request was assigned Control No. 74-41 and forwarded to this Office by Per Diem, Travel and Transportation Allowance Committee endorsement dated October 15, 1974.

The record indicates that Major was detached on July 20, 1972, from the Marine Corps Recruit Depot, San Diego, California, by Marine Corps Recruit Depot Special Order Number 91-72, dated May 15, 1972, modified by Depot Special Order Number 125-72, dated July 6, 1972, which directed a permanent change of station to the 3rd Marine Division, FMF, Okinawa, Japan. He reported on August 25, 1972, for a 12-month unaccompanied tour of duty in this restricted area. On his detachment, Mrs. did not relocate their household, but maintained the residence previously jointly occupied at , San Diego, California 92103. Mrs. traveled to Newnan, Georgia, on November 17, 1972, and returned to her apartment in San Diego on January 3, 1973.

Mrs. vacated her apartment in San Diego on March 28, 1973, and the household goods of Major and Mrs. were placed

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in nontemporary storage with King Van Lines of San Diego. She departed from San Diego on March 29, 1973, for Okinawa, Japan, where she visited Major for an authorized 60-day period, followed by an additional 2 weeks' vacation in Hong Kong and Taiwan.

Departing from the Far East in June 1973, Mrs. returned to San Diego, California, where she visited Major parents. According to the travel claim submitted by the member, Mrs. departed from San Diego, California, on June 14, 1973, and arrived in Newnan, Georgia, on the same date. Mrs. apparently resided with her foster parents, Mr. and Mrs. , Newnan, Georgia, from June 14, 1973, until September 5, 1973.

Marine Corps Special Order Number 34-73, Headquarters United States Marine Corps, Washington, D.C. 20380, dated June 13, 1973, directed Major transfer from the 3rd Marine Division with date of departure after August 18, 1973, to the 1st Marine Division, FMF, Camp Pendleton, California, to arrive in the continental United States (CONUS) not later than on August 23, 1973. Division Special Order Number 1009-73, Headquarters 3rd Marine Division, dated June 19, 1973, further directed his transfer from Headquarters Battalion of that division with date of departure after August 18, 1973, and not later than August 23, 1973, to report to 1st Marine Division, FMF, Camp Pendleton, California, for duty. Division Special Order Number 1009-73 was forwarded to him from Commanding Officer, Headquarters Battalion, 3rd Marine Division, FMF, by first endorsement dated August 17, 1973, and he acknowledged receipt of these orders on the same date. At the time of acknowledgment, it appears that he changed his leave address on the endorsement from , San Diego, California 92103, to , Newnan, Georgia 30263.

Major returned to CONUS at Norton Air Force Base, California, on August 18, 1973. On the memorandum endorsement of orders issued on his arrival, in what appears to be his own handwriting, he reported his leave address as San Diego, California 92107. He visited with his parents at this leave address before he traveled from San Diego to Newnan, Georgia, on August 21, 1973. He remained in Newnan until September 5, 1973, when he departed with his wife for California, ultimately reporting for duty with the 1st Marine Division, FMF, Camp Pendleton, California, on September 21, 1973.

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The household goods of Major and Mrs. held in non-temporary storage since March 28, 1973, were delivered by King Van Lines of San Diego to , Oceanside, California, on October 2, 1973. No household effects were shipped to Newnan, Georgia, during this period. However, some household effects owned by Mrs. were received on October 12, 1973, by Burnham Van Service, Inc., for shipment from , Newnan, Georgia, to Oceanside, California.

Based upon the authority of Division Special Order Number 1009-73, dated June 19, 1973, directing permanent change of station to Camp Pendleton, Major submitted a claim for dislocation allowance and dependant travel of his dependant, Mrs. , from Newnan, Georgia, to Oceanside, California, during the period from September 5-16, 1973, and by voucher No. 00891, disbursing symbol number 6187, Accounts of the Disbursing Officer, Camp Pendleton, dated September 26, 1973, he was paid \$215.40 for dislocation allowance and \$132 for reimbursement of dependant's travel.

On September 28, 1973, the Disbursing Officer, 1st Marine Division, FMF, Camp Pendleton, California, submitted the member's claim for dependant travel allowance and for a dislocation allowance based on his wife's travel from San Diego, California, to , Newnan, Georgia, performed on June 14, 1973, incident to his assignment to Okinawa, to the Commanding Officer, Marine Corps Finance Center, Kansas City, Missouri 64197, as a doubtful claim based upon a conclusion that the unaccompanied tour was for a period of 12 months and Major wife did not go to Newnan, Georgia, with the intent to set up a bona fide residence in accordance with the provisions of paragraph M7001, Volume 1, Joint Travel Regulations (1 JTR).

On July 29, 1974, the Commanding Officer, Marine Corps Finance Center, issued a letter to the Disbursing Officer, 1st Marine Division, FMF, via the Commanding General, informing that office that Major doubtful claim had been disallowed. The letter further advised that Major pay account would be charged \$347.40, representing the erroneous payment of \$215.40 dislocation allowance and \$132 reimbursement for dependant's travel, September 5 through September 16, 1973, incident to his permanent change of station from the 3rd Marine Division to the 1st Marine Division.

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On or about August 21, 1974, Major questioned the disallowance on grounds that all factors had not been considered and requested that collection from his pay be suspended until he might explain the doubtful circumstances and fully substantiate his claim. Collection from Major pay account was suspended pending a determination of the legality of the payment.

The view has been expressed by the Head, Disbursing Branch, Fiscal Division, U. S. Marine Corps, that doubt revolves around whether the member's household was relocated to a designated place as contemplated by paragraph M7001, 1 JTR, incident to his transfer to a restricted area, or whether movement was of the nature described in paragraph M7000, item 13, 1 JTR. Consequently, there is question regarding the necessity for recovery of dependent travel allowance and costs of shipment of household goods for a distance in excess of that between the member's previous and current CONUS permanent duty stations.

Section 406 of title 37, United States Code (1970), states that a member of a uniformed service who is ordered to make a permanent change of station is entitled to transportation in kind for his dependents, to reimbursement therefor, or to a monetary allowance, under such conditions and limitations as the Secretaries concerned may prescribe.

In accord with the foregoing, paragraph M7005-2, 1 JTR (ch. 209, June 1, 1970), effective at the time in question, specifies that a member transferred by a permanent change of station order to a restricted area, whose old duty station is located in the United States, is entitled to transportation of dependents to any place in the United States the member may designate. Such entitlement is contingent, under para. M7001, 1 JTR, upon the certification of the member that the place designated is in fact the place where his dependents will establish a bona fide residence during the interim period until further transportation is authorized.

Under paragraph M7000, item 12, 1 JTR, ch. 236, October 1, 1972 (now M7000, item 13) a member is entitled to transportation of dependents at Government expense upon a permanent change of station for travel performed from the old station to the new permanent station or between points otherwise authorized.

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However, under that provision travel of dependents to a place at which they do not intend to establish a residence and travel of dependents for pleasure trips or for purposes other than with intent to change their residence may not be considered as an obligation of the Government.

Section 407 of title 37, United States Code (1970), states that except as otherwise provided therein, under regulations prescribed by the Secretary concerned, a member of a uniformed service whose dependents make an authorized move in connection with his permanent change of station is entitled to a dislocation allowance equal to his basic allowance for quarters for one month as provided for a member of his pay grade and dependency status. Accordingly, paragraph M9000, 1 JTR, provides in pertinent part that the purpose of the dislocation allowance is to partially reimburse a member with dependents for the expenses incurred in relocating his household upon a permanent change of station. Paragraph M9003-1 of those regulations states that except as provided in paragraph M9004 the allowance is payable to a member whenever dependents relocate their household in connection with a permanent change of station. Paragraph M9004-2 of the regulations provides that a dislocation allowance will not be payable under certain conditions, including those outlined in paragraph M7000-12 of the regulations.

A right to transportation of dependents at the expense of the Government is not an allowance payable in all events on the basis that some travel was performed. No right to reimbursement from the Government arises unless the travel may be considered as incident to a change of residence as the result of an ordered permanent change of station for the member. We have consistently held that the expense of travel of dependents merely for the purpose of visiting the member, for pleasure trips, or for other purposes not contemplating a change of the dependents' primary residence in connection with a change of the member's permanent station is not an obligation of the Government. See 33 Comp. Gen. 431 (1954) and cases there cited.

In this regard "residence" generally is used to indicate the place where a person makes his home or lives as distinguished from a place of temporary sojourn. While mere presence at a location with no intention of remaining there for other than a short visit

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would not, in our opinion, establish a place of residence within the contemplation of the law and regulations, it is recognized that no minimum time at a particular location is required in order to establish a bona fide residence at that location.

The best evidence that the travel for which a member seeks reimbursement was to a bona fide residence is for his dependents to dwell permanently or for a considerable time at such place. When the dependents do not clearly establish such intention by taking up an extended residence at the place to which a transportation allowance is claimed, but go to some other place, their intent necessarily must be inferred from the surrounding circumstances. In cases where the dependents' stay in a particular place does not exceed the span of an ordinary visit, vacation or business trip and other facts in the case indicate that the travel was for purposes other than to establish a home, the conclusion is required that the travel involved was not to a bona fide residence within the contemplation of the law and regulations. See decision B-169604, July 28, 1970.

In United States v. _____, 184 F.Supp. 622 (S.D. Ala. 1960) the court indicated that while the law is quite clear in not being designed to permit travel allowances for visits of dependents of service personnel, each decision as to whether travel was performed incident to orders to an original duty station or a change of duty station of the particular serviceman concerned must be reached on its own factual situation. In that case a place at which the member's family resided for only a few weeks was considered a bona fide residence.

Although there is no requirement in the regulations for a time certain at a particular location in order to establish a bona fide residence at that location, travel of dependents in connection with a change of the member's permanent station is necessarily suspect when the stay at the new location is for a relatively short period of time. In questionable instances, the determination that such place is one at which the member does not intend to establish a bona fide residence depends upon the existence of evidence to support a conclusion that the dependents' stay was merely a visit or vacation.

The record here shows that Mrs. _____ vacated her apartment in San Diego on March 28, 1973, and that she did not

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have a bona fide residence or record prior to going to Newnan, Georgia, on June 14, 1973. Further, Mrs. stay there until September 5, 1973, a period of 12 weeks, during which she maintained no other residence, exceeded the span of an ordinary visit, vacation or business trip. On the basis of these facts, it is not clear that Mrs. stay at the home of her parents in Newnan, Georgia, was merely a visit or vacation. We must hold, therefore, that a bona fide residence for purposes of the allowances here in question was established at that place.

Accordingly, since the member's dependent's travel to Newnan, Georgia, was performed with the intention of establishing a residence there incident to his assignment to Okinawa, his claim for dependent travel and dislocation allowance incident thereto is allowed. Further, payments from Government funds for Mrs. travel from Newnan, Georgia, to Oceanside, California, and of a dislocation allowance in connection therewith were proper and should not be recovered from the member.

R.F.KELLER

Acting Comptroller General
of the United States