

DECISION



DIGEST - L 2me
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: **B-184507**

DATE: **FEB 17 1976**

MATTER OF: **Major , USA, Retired**

DIGEST:

1. Retired Army member's claim for reimbursement for personal and dependent air travel to home of selection overseas upon retirement is denied since air transportation in question was not at his personal expense as required by regulation but cost of such travel was paid for by member's new employer.
2. Member, who on retirement traveled to his home of selection in Iran and who is not entitled to be reimbursed for transoceanic air travel, is entitled to a mileage allowance for himself and his dependents from Fort Rucker, Alabama, his last duty station, to the appropriate aerial port of embarkation not to exceed mileage for travel actually performed at personal expense to actual port of embarkation.

This action is in response to correspondence from Major , USA, Retired, SSAN , wherein he requests reconsideration of the action taken by the Transportation and Claims Division of this Office dated May 23, 1975, in the matter of his claim for reimbursement for personal and dependent travel to his home of selection incident to his retirement on November 30, 1973.

The record indicates that by Letter Orders No. S8-265, dated September 25, 1973, issued by the United States Army Military Personnel Center, the member was retired from active duty effective November 30, 1973, pursuant to 10 U.S.C. 3911. Incident to that retirement, the file shows that the member and his dependents apparently chose Isfahan, Iran, as their home of selection and traveled to that location. Based on that travel, the member claims entitlement to be reimbursed for these expenses. As an accompaniment to that claim, the file contains an Internal Revenue Service

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form 4782 "Employee Moving Expense Information," which shows that the travel expenses for transportation and movement to Iran for member and his dependents were paid for by Bell Helicopter International, Inc., to a third party for the benefit of the member in the amount of \$1,543.92. Under the provisions of 26 U. S. C. 82 this amount was apparently included as part of the member's taxable income for that year.

On March 8, 1974, the Army Accounting and Finance Center forwarded the claim to our Transportation and Claims Division for appropriate action and recommended payment in the amount of \$770.04 which represents what it would have cost the Government to provide transportation to the location involved.

By settlement dated May 23, 1975, the Transportation and Claims Division disallowed the member's claim for travel expenses because it appeared that upon his release from active duty he was entitled to reimbursement for such transportation procured at his personal expense not to exceed the lowest cost to the Government for such travel. Payment of travel expenses by Bell Helicopter International, Inc., was not considered transportation procured at the member's personal expense.

The member requests reconsideration of that settlement because, in his view, Department of the Army Pamphlet (DA PAM) 608-2 authorizes travel allowance upon honorable separation from the service or upon retirement to the place authorized in the Joint Travel Regulations.

The pertinent statutes, 37 U. S. C. 404(c) and 406(g) (1970), provide that, under regulations prescribed by the Secretaries concerned, a member of the uniformed services who is retired in the circumstances described may select a home for the purposes of travel and transportation entitlements. Regulations issued pursuant to that authority are contained in Volume 1, Joint Travel Regulations (1 JTR), paragraph M4158-1a of which provides in pertinent part:

"Travel to Home of Selection Authorized.
A member on active duty may select his home and be entitled to travel and transportation allowances thereto from his last duty station as prescribed in par. M4150 or M4159, as applicable, when he:

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"2. is retired with pay * * * immediately following at least 8 years of continuous active duty with no single break therein of more than 90 days."

Paragraph M4159-1, 1 JTR, provides that a member traveling under permanent change of station orders (including separation from the service or relief from active duty) to, from, or between points outside the United States which orders did not specify group travel or direct travel by a specific mode of transportation will be entitled to:

- "1. the allowances prescribed in par. M4150 or M4154, as applicable, for the official distance between the old permanent station and the appropriate aerial or water port of embarkation serving the old duty station;
- "2. transportation by Government aircraft or vessel, if available, otherwise Government procured transportation or reimbursement for transportation procured at personal expense for the transoceanic travel involved * * * and
- "3. the allowances prescribed in par. M4150 or M4154, as applicable, for the official distance between the appropriate aerial or water port of debarkation serving the new station and the new permanent station."

Paragraph M4150-1 of 1 JTR (change 243, May 1, 1973), provided that a member could select mileage at the rate of \$0.06 per mile as a permanent change of station travel allowance. In addition, subparagraph 4b of M4159, 1 JTR, in effect at the time provided for entitlement to reimbursement for the cost of transoceanic travel performed at personal expense when Government transportation was not available. Paragraph M7010-1(a) provides that a member is entitled to a similar allowance for travel of his dependents.

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The member here incurred no personal expense for air travel for himself and his dependents from Dallas, Texas, to Tehran, Iran, since the cost of such travel was paid by Bell Helicopter International, Inc., to a third party for the benefit of the employee. Moreover, with respect to the member's contention that the travel allowances paid by Bell Helicopter International, Inc., were taxable to him as income and therefore constitute a personal expense, 26 U. S. C. 82(1970) does provide for the reporting of moving costs as income; however, section 217 of that title provides for deduction from reported income of reasonable moving expenses including travel costs. Under that section the air fare here in question could, no doubt, have been deducted from gross income.

Items 1 and 3 of paragraph M4159-1 in conjunction with M4150-1X authorize \$0.06 per mile for the official distance between the old permanent station and the appropriate aerial port of embarkation. However, mileage payments are authorized for reimbursement for travel performed at personal expense. See paragraph M4151, 1 JTR. Since travel at personal expense was performed from Fort Rucker to Dallas, Texas, mileage may be paid for that travel since the distance involved is less than the distance from Fort Rucker, to Dover, Delaware, the port of embarkation, had travel been performed by Government aircraft. Therefore, it appears the member is entitled to mileage from Fort Rucker to Dallas for himself and his dependents.

In connection with the member's contention that the DA-PAM 608-2 states that a member is entitled to a travel allowance to a home of selection upon retirement of 8 or more years of continuous active duty immediately preceding retirement, it is pointed out that this pamphlet merely restates in a general way the provisions of the Joint Travel Regulations which are the regulations which govern payments for travel and transportation under 37 U. S. C. 404(1970).

Accordingly, the disallowance of the Transportation and Claims Division is sustained except that the member may be paid appropriate mileage allowance between the old permanent station and Dallas, Texas, for himself and his dependents. A settlement will be issued in the amount found due in due course.

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With respect to appeals from this decision, the decisions of the Comptroller General are binding on the Executive Branch of the Government, 31 U. S. C. 741(1970). However, section 1491 of title 28, United States Code, provides for jurisdiction of the Court of Claims to render judgment upon any claim against the United States if the appropriate action is filed within 6 years following the date such claims first accrue. Under 28 U.S.C. 1334, United States District Courts have original jurisdiction with the Court of Claims if the amount involved does not exceed \$10,000.

R.F. KELLER

"Deputy" Comptroller General
of the United States