

DECISION



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

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FILE: DATE: FEB 26 1975

B-182900

MATTER OF:

Sergeant First Class
USA, Retired

DIGEST:

1. Member, who on retirement traveled to his home of selection in Iran with his dependents on an American flag commercial air carrier chartered by his new employer and who had \$3,133.15 included in his annual statement of earnings by his employer as an amount paid to a third party for travel expenses, is not entitled to reimbursement of such air travel expenses since that travel was not performed at personal expense as required by the applicable regulations.
2. Member, who on retirement traveled to his home of selection in Iran from Fort Monroe, Virginia, on an American flag commercial air carrier, is not entitled to be reimbursed for trans-oceanic air travel since the travel was not performed at personal expense. However, he is entitled to a mileage allowance for himself and his dependents from Fort Monroe to the appropriate aerial port of embarkation, Dover Air Force Base, Delaware, since this was the only travel performed at personal expense and paragraph M4151 of the Joint Travel Regulations provides that mileage is an allowance payable for travel performed at personal expense.

This action is in response to a letter dated September 8, 1975, with enclosures, and prior correspondence, from Sergeant First Class USA, Retired, SSAN , which requests reconsideration of our Transportation and Claims Division settlement dated August 1, 1974, which disallowed his claim for reimbursement for the cost of air travel performed by him and his dependents incident to travel to his home of selection following retirement from the United States Army in 1973.

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The record shows that by Letter Order Number 4-211, dated April 13, 1973, the member was relieved from active duty at Fort Monroe, Virginia, on June 30, 1973, and placed on the retired list effective July 1, 1973. After traveling by private automobile from Fort Monroe to Atlanta, Georgia, and from there by regularly scheduled commercial airline to Dallas, Texas, the member and his dependents departed that location on August 17, 1973, by chartered American flag commercial air carrier and arrived at his home of selection in Tehran, Iran, on August 18, 1973.

On November 3, 1973, the member filed a claim with the Army Finance and Accounting Center for reimbursement of the cost of such travel for himself and his dependents from his last duty station at Fort Monroe to his home of selection in Iran. In response to a request for additional information, the member submitted a certified statement which indicated that the cost of travel from Dallas, Texas, to Tehran, Iran, for himself and his five dependents was provided by Bell Helicopter International, Inc., in the amount of \$2,850.

By letter dated April 30, 1974, the Army Finance and Accounting Center forwarded the claim to our Transportation and Claims Division for appropriate action and recommended payment in the amount of \$1,134.42, which represents the computed cost to the Government to provide transportation for the member and his dependents to his home of selection in Iran.

By settlement dated August 1, 1974, the member was allowed reimbursement in the amount of \$36.42 for personal and dependent travel from Fort Monroe to Dover Air Force Base, Delaware, but that portion of the claim relating to other travel costs was disallowed because no personal expense was incurred by the member for such travel, citing the provisions of paragraphs M4159-1 and M7002-2½ of the Joint Travel Regulations as controlling.

By letter dated August 28, 1974, with enclosure, addressed to the Army Finance Support Agency, the member in effect requested reconsideration of our settlement and stated that upon gaining employment, it was negotiated in his contract that all travel arrangements for himself and his dependents would be made by his employer and that the cost of such travel was a part of his total annual income which he considered personal earnings.

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He concluded, therefore, that the cost of such travel was at his personal expense and as such should be reimbursed. He also enclosed a copy of his 1973 Wage and Tax Statement (Form W-2) which indicated that his employer included \$4,465.65 as other compensation for Federal income tax purposes. By letter dated September 8, 1975, the member enclosed a copy of his 1973 Employee Moving Expense Information Form (Form 4782), furnished to him by his employer, which shows that his employer paid \$3,113.15 to a third party on his behalf for travel, meals, and lodging in moving from the old residence to the new area of employment.

The entitlement of a member of the uniformed service for travel and transportation expenses for himself and his dependents to his home of selection incident to retirement is governed by the provisions of sections 404 and 406 of title 37, United States Code (1970), and the provisions of the Joint Travel Regulations (JTR), promulgated pursuant thereto. Paragraph M4159-1 of the JTR, in effect during the period of the claim, 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."

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Paragraph M4150-1 of the JTR (change 243, May 1, 1973), provided for payment of mileage at the rate of \$0.06 per mile as a member's permanent change of station travel allowance. However, paragraph M4151 of those regulations provides that mileage is an allowance to cover the cost of travel regardless of mode which a "member is authorized to and does perform * * * at his personal expense." Paragraph M4159-4a of those regulations (currently paragraph M4159-5a) provided that when travel by Government transportation is authorized and the member performs transoceanic travel by another mode of transportation "at personal expense," the member is entitled to reimbursement for the cost of the transportation utilized not to exceed the cost to the Government to provide such transportation.

In regard to dependent travel, paragraph M7003-1 of the JTR provides that a member entitled to transportation of dependents in accord with paragraph M7000 (including travel from the last permanent duty station to home upon retirement) is authorized a monetary allowance in lieu of transportation (exclusive of transoceanic travel) performed by dependents "at personal expense."

The member contends that since his employer reported to the Internal Revenue Service, as required by 26 U. S. C. 82(1970), the cost of his and his dependents' air travel and included this amount in his annual statement of income, he in effect paid for the cost of the air travel "at personal expense." We note, however, that the member was allowed to deduct amounts paid for reasonable moving expenses under the provisions of 26 U. S. C. 217(1970). Under that provision the air fare here in question was no doubt a deductible item. See 26 U. S. C. 217(b)(1)(B). In this case, the member's new employer agreed to provide transportation to the new place of employment for the member and his dependents. This was done by providing transportation in kind from Dallas to Iran. The member incurred no personal expense for travel to Iran except for local transportation in the United States. Moreover, the provisions of the Internal Revenue Code, which are designed to provide for equitable treatment of moving costs of taxpayers whether self-employed or otherwise, do not furnish the basis for a holding that the cost of air travel here involved was a personal expense of the member.

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Since it appears that the only travel performed by the member at personal expense was from his last duty station, Fort Monroe, to Dallas, the actual place of embarkation and since mileage based on that travel from his last duty station to Dover Air Force Base, Delaware, the appropriate port of embarkation to Iran, has been paid, no further payments for the member's travel are due. Further, since the member's dependents performed travel on a similar basis and since payment has been made on a similar basis, no further payment is due in this case.

Accordingly, the settlement of August 1, 1974, is sustained.

R. F. KELLER

Deputy Comptroller General
of the United States