

**DECISION**

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

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FILE: B-182487

DATE: FEB 17 1976

MATTER OF: CW4 , USA, Retired

## DIGEST:

1. Member, who on retirement traveled to his home of selection in Iran with his wife on an American flag commercial air carrier chartered by his new employer and who had \$950 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 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 Hood, Texas, 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 wife from Fort Hood to the appropriate aerial port of embarkation but is limited to payment of mileage to the actual port of embarkation Dallas, Texas, since this was the only travel performed at personal expense and paragraph M4151 of the JTR provides that mileage is an allowance payable for travel performed at personal expense.

This action is in response to correspondence from Chief Warrant Officer  USA, Retired, SSAN , requesting reconsideration of our Transportation and Claims Division settlement dated August 1, 1974, which disallowed his claim for reimbursement for air travel performed incident to travel to their home of selection following retirement from the United States Army.

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The record shows that by Letter Order Number S4-154 dated April 16, 1973, the member was retired from the United States Army, effective May 31, 1973, at Fort Hood, Texas. After traveling by private automobile from Fort Hood to Dallas, Texas, the member departed Dallas on August 17, 1973, by chartered American flag commercial air carrier and arrived at his home of selection in Isfahan, Iran, on August 21, 1973. Similarly, after traveling by private automobile from Copperas Cove, Texas--which is in the vicinity of Fort Hood--to Dallas, the member's wife departed Dallas on the same chartered airline on October 20, 1973, and arrived in Isfahan, Iran, on October 23, 1973.

On January 27, 1974, the member filed a claim with the Army Finance and Accounting Center for reimbursement of the cost of such travel for himself and his wife from his last duty station at Fort Hood to his home of selection in Iran. In response to a request for additional information, by letter dated May 7, 1974, the member indicated that while the exact cost of the air fare was not known, his employer in Iran, Bell Helicopter International, Inc., paid the airline for the cost of the air transportation and on Internal Revenue Service Form No. 4782 (Employee Moving Expense Information), his employer reported that the amount of \$950 was paid to a third party for the benefit of the employee representing the cost of travel, meals and lodging in moving from the old residence to the new area of employment.

On July 2, 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 \$591.84, which represents the computed cost to the Government to provide transportation for the member and his dependent.

Settlement dated August 1, 1974, allowed reimbursement in the amount of \$19.26 for personal and dependent travel from Fort Hood to Dallas but disallowed the portion of the claim relating to air travel because no personal expense was incurred by the member for such travel. It was indicated that under the provisions of paragraphs M4159-1 and M7002-2, Volume 1 of the Joint Travel Regulations, reimbursement was authorized only for transportation procured at personal expense.

The member requests reconsideration of that settlement because in his view a portion of his income (\$950), on which

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he states that he paid FICA and Federal income taxes, was used to pay for his and his wife's travel, and therefore the cost of such travel was at his personal expense. In support of his position, the member also states that he is aware of a situation in which a retired member took a similar trip on the same airline, paid for by the same method, and was paid \$1,035.72 by the Department of the Army.

Sections 404<sup>✓</sup> and 406<sup>✓</sup> of title 37, United States Code (1970), provide that under uniform regulations prescribed by the Secretaries concerned, a member who is retired with pay may select his home and receive travel and transportation allowances thereto for himself and his dependents. Implementing regulations are contained in Volume<sup>✓</sup> of the Joint Travel Regulations. Paragraph M4159-1<sup>✓</sup> of the regulations (change 234, August 1, 1972), 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 (see subpar. 4) \* \* \* 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<sup>✓</sup>, change 243, May 1, 1973, provided for payment of mileage at the rate of \$0.06 per mile as a member's permanent

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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 the regulations, change 235, September 1, 1972 (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 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), that the cost of his and his wife's air travel was \$950 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 new employer agreed to provide transportation to the place of employment for the member and his wife. This was done by providing transportation in kind from Dallas to the work site in Iran. The member incurred no personal expense for travel to Iran except for local transportation in the United States. The provisions of the Internal Revenue Code which are designed to provide equitable treatment of moving costs incurred by 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.

Further, even if another retired member may have been improperly reimbursed by the Department of the Army for expenses incurred in a similar situation that does not provide a legal basis for payment in the present situation.

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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 Hood, to Dallas, the actual place of embarkation and since mileage based on that travel has been paid no further payments for the member's travel are due. Further, since the member's wife 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**