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COMPTROLLER GENERAL OF THE UNITED STATES
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✓ Dear Mr. Secretary:

In letter dated October 12, 1962, the Under Secretary of the Army requested our decision on questions which have arisen in connection with the travel and transportation rights of a member of the uniformed services who is involuntarily released to inactive duty with readjustment pay immediately following at least 8 years of continuous active duty (with no single break therein of more than 90 days) and who, after a break in service but prior to completion of travel to a home of selection, voluntarily re-enters the service and is assigned to a station different from the one at which he last previously served. The request was assigned Control No. 62-21 by the Per Diem, Travel and Transportation Allowance Committee.

It is stated that paragraph 4158-1a, Joint Travel Regulations, provides that a member following release to inactive duty in these circumstances may select his home and receive travel allowances thereto, provided the travel is completed within one year after the termination of active duty, or within a longer period if undergoing hospitalization or medical treatment on the date of termination of active duty. No provision is made as to the entitlements of a member who, following a break in service and before completion of travel to a home of selection, rejoins the service of his own volition.

In his letter the Under Secretary describes a case of the type under discussion as follows: An officer member is separated at his permanent station in Texas. His home of record is in Pennsylvania and the place from which he was ordered to active duty is in Florida. Under the Joint Travel Regulations he is authorized to select a home. A month or so after he is released to inactive duty and before he selects a home, he enlists in the Regular Army in grade E-5 at a place in Alabama and is assigned to a permanent station in Georgia. It is stated that since paragraph 4158-1a, Joint Travel Regulations, uses the phrase "may select his home," the question arises whether a member in this category may, instead, elect mileage under the provisions of paragraph 4157-1a. If so, it is considered that his household goods shipping rights would be for determination on the basis of 37 Comp. Gen. 458, and that decision B-148269, dated 9 April 1962, would be for application in establishing his entitlement to dependent travel. 4182

In the event we concur in these observations the Under Secretary asks whether the member would retain his rights to select a home upon ultimate separation as is authorized by paragraph 4158-3 for members recalled to active duty prior to the selection of a home and before expiration of the time limitation.

If the answers to the above are in the negative, he asks us whether a member in this situation would be entitled to mileage from his last permanent station to the place where he enlisted and transportation for his dependents and household goods from such last permanent station to the permanent station to which he was assigned following enlistment, and if so, would he retain his rights to select a home upon ultimate separation. It is further stated in the letter that should the answers to the latter questions also be in the negative, it would appear that a member in this situation would not be entitled to any travel and transportation allowances unless he designated his permanent station in Georgia as his home of selection.

Prior to the enactment of the act of July 12, 1960, Pub. L. 86-638, 74 Stat. 471, which amended section 303 of the Career Compensation Act of 1949, 63 Stat. 813, 37 U.S.C. 404 and 406, formerly 37 U.S.C. 253, a Reserve officer who was released to inactive duty in these circumstances was not allowed to select a home for the purpose of travel and transportation allowances or for the transportation of his dependents and household effects. Instead, such travel and transportation allowances were payable on his election to either his home of record at the time of being called to active duty or to the place from which called to active duty. The enactment of this legislation, however, gave such member this right of selection of a home for purposes of entitlement to travel and transportation allowances and transportation of dependents and household effects upon release from active duty under the specified circumstances. It is indicated in House of Representatives Report No. 1512 dated April 13, 1960, to accompany H.R. 10068, that the purpose of the legislation was to give to these Reservists the right to select a home the same as was given by the act of August 11, 1955, ch. 506, 69 Stat. 691, to Reservists upon retirement, it being the legislative intent to accord equal treatment in this respect to such Reservists released with readjustment pay and Regulars who are discharged with severance pay following the required service. Regulars in such circumstances do not have the right to make three elections, that is, to receive allowances to the home of record, the place from which ordered to active duty, or the home of selection. See 30 Comp. Gen. 169, and decision of December 4, 1954, B-121353. Nor do we find anything in the legislative history of the act to indicate that it was intended to give such multiple choice to Reservists. Paragraph 4158-1a of the Joint Travel Regulations, issued pursuant to 37 U.S.C. 404, provides that a member who is released to inactive duty in such circumstances may select a home and receive travel and transportation allowances thereto from his last duty station provided travel is completed to the selected home within one year after termination of active duty. Paragraph 4157-1a of the regulations, providing for mileage to home of record or place from which ordered to active duty, specifically excepts members who come under paragraph 4158-1a (those entitled to select a home). The regulations apparently

are in conformity with the legislative intent. In the absence of any evidence of a legislative intention to authorize payment to the home of record or place from which ordered to active duty when no home is selected and since the law authorizing payment provides that it shall be under regulations prescribed by the Secretaries concerned we find no basis to conclude that the member in the case presented is entitled to allowances to home of record or place from which ordered to active duty. In line with this view we held in decision of March 18, 1960, B-142029, that a Reservist who was retired in 1957 at Fort Hamilton, New York, and who selected St. Louis, Missouri, as his home was not entitled to ship his household goods at Government expense to Racine, Wisconsin, his home of record, since under the law in effect at that time his only entitlement was to ship the goods to his home of selection. Therefore, the question whether a member in the category presented may elect mileage under the provisions of paragraph 4157-1a, Joint Travel Regulations, is answered in the negative. See generally, B-130044, July 17, 1961; 40 Comp. Gen. 375; compare 36 Comp. Gen. 781.

The Under Secretary refers to our decisions in 37 Comp. Gen. 458, and B-148269, April 9, 1962, 41 Comp. Gen. _____, in connection with such member's entitlement to transportation of his dependents and shipment of his household effects. In our decision of January 3, 1958, 37 Comp. Gen. 458, we considered the household goods shipping rights of an officer who after separation from the service reenlisted as a master sergeant. We concluded that since the member was entitled to ship his authorized weight allowance to his home of record the regulations did not require that he forfeit such right by his re-entry into the service and therefore in addition to his weight allowance as an enlisted man he was authorized to ship his additional authorized weight allowance as an officer from the place the effects were located to his new station not to exceed the cost of shipping the additional effects to his home of record. Also, in our decision of April 9, 1962, B-148269, 41 Comp. Gen. _____, we considered the situation of a member who was discharged in the United States after his return from overseas and who reenlisted in the service without performing travel to home of record or place from which ordered to active duty. In that situation, we concluded that since the member would have been entitled to reimbursement for his dependents' travel to his home of record incident to his discharge from the service, which is authorized on the same basis as in case of a permanent change of station, the member was entitled incident to his reenlistment to reimbursement for transportation of dependents from the point of debarkation from his overseas station, to the place where they traveled, not to exceed reimbursement for the cost of travel from the point of debarkation to the new duty station. Reimbursement on such basis did not exceed the cost to home of record.

B-150187

Since mileage to home of record is payable without actual travel thereto by the member, and transportation of dependents and household effects may be to some other point, we have recognized such travel and transportation rights as having continued when the member reenlists following a short break in service and moves to the new station without returning to the home of record. No entitlement to travel and transportation rights to home of selection accrues, however, unless the member actually travels thereto for the purpose of establishing a residence. Therefore, in answer to the question concerning the member's entitlement to transportation of his dependents and shipment of his household effects, it appears that since no home was selected during the period that the member was out of the service, he is not entitled to transportation of his dependents and shipment of his household effects incident to his release from active duty.

Upon his enlistment a member otherwise eligible is entitled to transportation for his dependents and household effects to his first permanent station not to exceed the distance from his home. While the member in question did not select a home, if he continued to maintain his dependents at his old station in Texas until his enlistment, he would be entitled to transportation for his dependents and household effects to his first permanent station from the place where located on the date of his enlistment not to exceed the cost from his old station. If, however, the member's dependents were no longer at his old station in Texas at the time of his enlistment, he would be entitled to transportation for his dependents and household effects to his permanent station from the place where located on that date not to exceed the cost from the place of enlistment.

The member would not be entitled to allowances for his own travel from the place of release from active duty to the place of enlistment since such travel was performed for personal reasons while out of the service and was not authorized incident to either his release from active duty or to his enlistment.

Concerning the question whether the member retains his right to select his home upon ultimate separation, paragraph 4158-3⁴ of the regulations provides that a member who is otherwise eligible to select a home under that paragraph and who is recalled to active duty before selecting a home and traveling thereto may, upon termination of active duty under honorable conditions, select a home and receive travel allowances thereto. In the case of a member, however, who is eligible to select a home, but who voluntarily re-enters the service before selecting his home and traveling thereto, the regulations contain no provision which would save to him such right upon his subsequent release from active duty. Therefore, if the present laws and regulations continue in effect until the termination of the member's enlistment, his travel and transportation rights will be those which accrue incident to his release from active duty as an enlisted man.

Concerning the question whether the member may designate his duty station in Georgia as his selected home, it was stated in 1 Comp. Gen. 363, 364, as follows:

"The word 'home' as used in an order of retirement means the place which the retired officer selects to return to civil life from his military life and where he expects to dwell while in civil life and to which he has the intention of going when retired and to which he does actually go. * * *

Also, because of the transitory nature of military service, the station or post of duty to which a member is ordered is not regarded as his permanent home and, hence, a member's home or domicile is not changed incident to a change of stations. Since the purpose of permitting a member to select a home is to return to civil life after termination of his active military status, there would be no authority after the member had reenlisted and while serving on active duty to designate the permanent station, to which he is ordered for the performance of military duty and not for any purpose of establishing his home as a civilian, as his selected home for the purpose of receiving allowances thereto incident to his release as an officer.

The questions presented are answered accordingly.

Sincerely yours,

Joseph Campbell

Comptroller General
of the United States

The Honorable
The Secretary of the Army