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

B-177097

JAN 19 1973

To the Congress of the United States:

Pursuant to the act of April 10, 1928, 45 Stat. 413, 31 U.S.C. 236, we submit the following report and recommendation concerning payment to , Service No. 416-14-5576, for travel expenses as an employee of the Department of the Army.

The claim is for relief from liability to the United States and for repayment of any amounts remitted by the claimant or withheld from amounts otherwise due him toward liquidation of the amount for which he is liable as an employee of the Federal Government.

Our records show that , a Systems Accountant, GS-13, employed by the Department of the Army, was transferred from Alaska to Okinawa arriving at his new duty station August 23, 1969. As a result of this move he was required, consistent with paragraph C 4005-3b of the Joint Travel Regulations, Volume 2, to negotiate a transportation agreement for a 24-month period beginning with the day of his arrival. After serving 12 months less 5 days in Okinawa, was transferred, by reason of a reduction in force, from Okinawa to Fort Richardson, Anchorage, Alaska. The transfer was pursuant to Letter Orders Number P-579, dated July 9, 1970, which authorized a permanent change of station in conjunction with "renewal agreement travel." By those orders the employee was authorized, effective on or about August 15, 1970, to visit Meridian, Mississippi, for 30 calendar days including travel time allowance for home leave in lieu of Benton, Texas, which had been designated as his place of actual residence at the time of his appointment with the Department of the Army in 1966 and on completion of leave to proceed to Fort Richardson. His dependents were authorized, effective on or about August 1, 1970, to travel unaccompanied at Government expense.

Travel was performed by the employee direct to Fort Richardson. Dependents did not travel direct to Fort Richardson but in accordance with travel orders departed from Okinawa August 6, 1970, and traveled via San Francisco, California; Dallas, Texas; and Meridian, Mississippi, then on to Fort Richardson arriving there September 21, 1970. On that date Letter Orders Number P-579 was amended by Letter Orders Number P-780 deleting the authorization for home leave travel for the employee and authorized direct travel to Fort Richardson incident to the permanent change of station.

It is contention that the Civilian Personnel Office (CPO) in Okinawa refused to issue travel orders for the direct, concurrent travel of him and his dependents from Okinawa to Anchorage, Alaska, despite his consistent appeals and insistence that they do so. He states that the CPO representative erroneously maintained that there was no provision for direct travel to Alaska, that the dependents must go to the continental United States, take leave and await travel orders. He further states that the original travel order, Letter Orders Number P-579, was furnished him on July 20, 1970, and on that date he discussed it with his superior, Mr. Joshua Kramer, Director, Comptroller Department, USCAR. At Mr. Kramer's suggestion a memorandum was prepared by on July 22, 1970, explaining the desired amendments to the travel order. This was endorsed by Mr. Kramer on July 23, 1970, and presented to the CPO the same day for issuance of amended orders. The orders, if amended as requested, would have provided for direct travel of and his dependents to Anchorage, Alaska, and among other things would have deleted all reference to renewal agreement travel.

was not at the time entitled under the applicable regulations to renewal agreement travel and an amendment of the orders, as requested, would have corrected the error made on the original orders. states the CPO refused to issue amended orders and as a result thereof his dependents were, through administrative error forced to go to Dallas, Texas. , on the other hand and contrary to the original travel order was provided commercial transportation and was required to proceed directly to Anchorage and he states, in this respect, that he had no control over the routing. Incident to the travel of his wife and dependents on home leave was reimbursed \$1,066.09 traveling expenses, which for the reasons hereinafter stated was without authority of law.

5 U.S.C. 5728(a) authorizes the expenses of round-trip travel of an employee and transportation of his immediate family from his post of duty outside the continental United States to the place of his actual residence at the time of his appointment or transfer to the post of duty after he has satisfactorily completed an agreed period of service outside the continental United States and is returning to his actual place of residence to take leave before serving at the same or another post of duty outside the continental United States under a written agreement made before departing from the post of duty.

Applicable regulations in section 7.1 of Office of Management and Budget Circular No. A-36, revised October 12, 1966, provide that in order

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to be eligible to receive the authorized travel and transportation expenses in connection with leave for returning to place of residence between tours of duty outside the continental United States, the employee must have (1) completed the agreed period of service as provided in section 1.3c½ of the Circular and (2) entered into a new written agreement for another period of service. Section 1.3c½ of the Circular requires an employee to remain in the service of the Government for a minimum of 12 months at his overseas post of duty following the effective date of his transfer or appointment before he is entitled to round-trip travel at Government expense for the purpose of taking leave between tours of duty outside the continental United States.

In some cases we have not objected to the Government terminating employment agreements which provide for a 2-year tour of duty prior to the expiration date where it is considered for the Government's benefit to do so and authorize travel at Government expense for home leave provided the employee has served at his overseas post a minimum of 12 months prior to the termination. See 37 Comp. Gen. 62½ (1957). However, the above statutory provision does not authorize payment of the transportation expenses of the employee's immediate family from the overseas post of duty to actual place of residence in the United States unless the employee himself returns to the United States for the purpose of taking leave. See 35 Comp. Gen. 101½ (1955).

We note that [redacted] did not travel to the United States with his immediate family in August 1970 for the purpose of taking leave and there is no authority to reimburse him for the travel and transportation expenses incurred by his immediate family in performing such travel.

Although [redacted] was in no way at fault and accepted reimbursement of the travel and transportation expenses in good faith, the fact remains that he has been reimbursed \$1,066.09 for the travel and transportation of his dependents incident to home leave and is legally liable for the resulting indebtedness. There is no authority under which we may relieve him of his indebtedness or refund any sum that he has repaid to the Government.

The act of April 10, 1928, 45 Stat. 413, 31 U.S.C. 236, provides, however, for the submission to the Congress by this Office of those claims against the United States which may not be lawfully adjusted but

which are determined to contain "such elements of legal liability or equity as to be deserving of the consideration of the Congress." We believe the claim of [redacted] contains such elements of equity as to deserve the consideration of the Congress, and recommend that he be relieved from liability to refund the sum of \$1,066.09 for travel and transportation expenses expended by the Government incident to home leave travel for his dependents.

If the Congress should concur in our recommendation in this case, our opinion is that enactment of a statute in substantially the following language will accomplish the relief recommended:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That (a) [redacted], an employee of the Department of the Army, Fort Richardson, Alaska, is hereby relieved of liability to the United States in the sum of \$1,066.09 representing the amount expended by the Government for travel and transportation expenses of his dependents incident to home leave travel. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for the amount for which liability is relieved by this Act.

"(b) The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to [redacted], an amount equal to the aggregate of any amounts paid by him or withheld from sums otherwise due him by reason of the liability referred to in this Act. No part of the amount appropriated in this section in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

Paul G. Dembling

Acting Comptroller General
of the United States