



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20540

B-177435

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May 21, 1973

The Honorable Robert C. Seamans
The Secretary of the Air Force

Dear Mr. Secretary:

Further reference is made to letter dated October 26, 1972, from the Assistant Secretary of the Air Force, Manpower and Reserve Affairs, requesting a decision as to whether this Office would object to amending the Joint Travel Regulations to provide for the advance return of dependents of members of the uniformed services at Government expense from overseas to the United States due to the "lack of suitable recreational activities and acceptable employment opportunities" for dependents at overseas stations. The request has been assigned Control No. 72-51 by the Per Diem, Travel and Transportation Allowance Committee.

The Assistant Secretary indicates that because of limited job opportunities and a lack of recreational activities, families frequently discover that certain overseas areas do not provide suitable environment for dependent children over 18 years of age. Thus, the Assistant Secretary indicates, because of idle time, some dependents become involved with narcotics and drugs thereby creating embarrassing situations for the United States. Further, he states, some dependents in this category cause additional administrative problems because of truancy, vandalism, and other instances of societal protest. The Assistant Secretary also notes that if a member's dependents are unhappy in overseas areas, for whatever reason, their misery has a direct impact and bearing on the member's duty performance and morale.

For these reasons the Assistant Secretary asks whether we would be required to object to amending the Joint Travel Regulations to authorize the advance return at Government expense of members' dependents under the circumstances discussed above. The proposed amendment would be an additional condition under paragraph H7103-2 of the regulations, which lists the types of cases and conditions under which such advance travel of dependents is authorized.

As the Assistant Secretary indicates, in our decision 38 Comp. Gen. 28 (1958), we considered the provisions of section 303(c) of the

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52 Comp. Gen. _____

[Request for opinion on amendment to]

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4/25/322 [Joint Travel Regulations]

Career Compensation Act of 1949, 63 Stat. 802, 814, now codified in 37 U.S.C. 406(e), under which the Secretary concerned may "under unusual or emergency circumstances," authorize the movement at Government expense of the dependents, baggage and household effects of a member when orders directing a change of permanent station for the member have not been issued, or when they have been issued but cannot be used as authority for the transportation of dependents, baggage and household effects.

In that decision we indicated that basically the statute authorized the Secretary concerned to issue regulations providing for the early return of dependents and household effects of members only because of actual conditions of an emergency nature arising at overseas duty stations which justified such return and which generally could not arise, or are most unlikely to arise in the case of members serving in the United States. On that basis we expressed the view that conditions such as financial difficulties, marital troubles, a member's desire to return dependents to the United States to attend school, illness of relatives, etc., are not conditions which the law intended to be used as a basis for giving such preferential treatment to overseas personnel in the matter of transportation of dependents and household effects, these conditions being no different than those encountered by members on duty in the United States.

However, as the Assistant Secretary also notes, the act of August 14, 1964, Public Law 88-431, 78 Stat. 439, broadened the Secretaries' authority to authorize advance return of dependents from overseas stations by adding to 37 U.S.C. 406, subsection (h) which provides in pertinent part as follows:

(b) In the case of a member who is serving at a station outside the United States or in Hawaii or Alaska, if the Secretary concerned determines it to be in the best interests of the member or his dependents and the United States, he may, when orders directing a change of permanent station for the member concerned have not been issued, or when they have been issued but cannot be used as authority for the transportation of his dependents, baggage, and household effects—

(1) authorize the movement of the member's dependents, baggage, and household effects at that station to an appropriate location in the United States or its possessions and prescribe transportation in kind, reimbursement therefor,

or a monetary allowance in place thereof, as the case may be, as authorized under subsection (a) or (b) of this section; and

(2) authorize the transportation of one motor vehicle owned by the member and for his or his dependents' personal use to that location by means of transportation authorized under section 2634 of title 10.

As to the need for Public Law 88-431, its legislative history shows that in the hearing [No. 10] before Subcommittee No. 1, Committee on Armed Services, House of Representatives, on H.R. 4739 which became Public Law 88-431, Major T. H. Twisdale U.S. Army, testified on behalf of the Armed Services. His testimony is in part (pages 3005 - 3006) as follows:

Under the present provisions of section 406(a) of title 37, United States Code, authority for advance return of dependents and household goods of members is limited to "unusual or emergency circumstances." These limitations have been found undesirable, and too restrictive to meet the needs of the services. The advance return of dependents under circumstances which under present law and rulings of the Comptroller General may not be regarded as "unusual or emergency" in nature is considered essential from the standpoint of the morale and welfare of members and their dependents.

Unforeseen family problems, changes in a member's status, and changing economic and political conditions in the various oversea areas at times require the advance return of dependents, household goods, and privately owned vehicles from an oversea area to the United States, as being in the best interest of the individual and the Government. Such instances, however, often do not satisfy the "unusual or emergency circumstances" requirement of the present law. Dependents who are confronted with compelling personal problems for which advance return is not now authorized place an additional administrative burden on oversea commanders. Those dependents may also have an adverse effect on the sponsor's performance of duty and the operational readiness of our combat forces. In certain instances in the past they have caused incidents prejudicial to the best interests of the

United States. Examples of situations warranting advance return of dependents would include such compelling personal reasons as marital difficulties, extreme financial difficulties brought about by circumstances such as confinement or reduction in grade of the member, which preclude the furnishing of adequate support for dependents, death or serious illness of close relatives, and other situations in which the appropriate commander determines that the best interests of the Government and the member or dependent will be served. It is normally best to permit, or if necessary require, these dependents to be returned to locations in the United States in advance of the return of the sponsors. (Underscoring added.)

It is pointed out in the legislative history of 37 U.S.C. 406(h) that this authority is not to be abused and that the advance return of a dependent at Government expense is a one-way proposition, excluding return travel at Government expense to the overseas station unless the member receives a permanent change of station or unless it is for the convenience of the Government.

Concerning the Assistant Secretary's remarks regarding dependent children over 18 years of age who might become involved with narcotics and drugs and thereby create an embarrassing situation for the United States, we note that currently the commanding officers of overseas areas appear to have sufficient authority under paragraph M7102 of the Joint Travel Regulations to authorize the advance return from overseas stations at Government expense of dependents who become involved in situations embarrassing to the United States.

There is also for noting that paragraph M7103-2, Item 7, authorizes advance return of one or more of a member's dependents at Government expense when the member requests such return and his commanding officer determines that the best interests of the member or his dependents and the Government will be served by such return for compelling personal reasons including among others, "unforeseen family problems" or "for reasons of a humanitarian or compassionate nature, and in other situations which have an adverse effect on the member's performance of duty."

It is our view that in enacting 37 U.S.C. 405(h) the Congress did not contemplate that advance return of the category of dependents here involved from overseas areas at Government expense would be authorized merely for the reason that there is a "lack of suitable recreational activities" at the overseas station. We do not believe this type of

situation is within the purview of the law or the legislative intent. It is our view, therefore, that 37 U.S.C. 406(h) does not provide such authority and, accordingly, we would be required to object to amending the Joint Travel Regulations which would include, as a condition for the advance return of dependents at Government expense, a lack of suitable recreational facilities.

We are of the view, however, considering the language of the statute and its legislative history, that the authority granted in 37 U.S.C. 406(h) is sufficiently broad to authorize the inclusion in the regulations, as a reason for advance return of dependent children (18 years or older), because of the lack of acceptable employment opportunities at the overseas station. To meet this condition, the regulations should require that the appropriate commander determine that because of the lack of employment opportunity at the overseas station and the resulting idleness, the dependent child or children are likely to become involved in situations as described in the Assistant Secretary's letter which place additional administrative burdens on the overseas commander or have adverse effects on the member's duty performance, and that such advance return is in the best interests of the member or his dependents and the United States.

Accordingly, we would not be required to object to such an addition to the regulations.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States