DECISION

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

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FILE: B-180352 DATE: JUN 12 1975

MATTER OF: Uniformed services members' travel and transportation entitlements on retirement

DIGEST:

1. Volume 1, Joint Travel Regulations, may be amended to reflect that members of the uniformed services who qualify for travel and transportation allowances to home of selection under 37 U.S.C. §§ 404(c) and 406(g) retain the right to travel and transportation allowances based on home of record or place of entry on active duty under 37 U.S.C. §§ 404(a) and 406(a). 42 Comp. Gen. 370 (1963) and B-163248, March 19, 1968, overruled.

2. In connection with retirement of military members Volume 1, Joint Travel Regulations, may be amended to permit shipment of household goods within the specified time limit to one or more places provided the total cost does not exceed the cost of shipment in one lot to the home of selection, home of record, or place of entry on active duty, whichever provides the greatest benefit.

3. A member upon retirement is entitled to travel at Government expense to his home of record or place of entry on active duty or to his home of selection if he qualifies. However, 37 U.S.C.§404(f) which permits travel payments upon separation or release of military members without regard to the performance of travel is not applicable to members upon retirement or placement on the temporary disability retired list. Such members may be paid only on the basis of authorized travel actually performed.

4. Claims arising before June 14, 1974, the date of 53 Comp. Gen. 963 (1974), for travel and transportation allowances to

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home of record or place of entry on active duty of members of uniformed services who were denied such allowances to selected homes may not be considered on basis of rule announced in that decision since it modifies or overrules prior decisions construing the same statutes. The effect of that decision is prospective except for its application to claimant in that decision. B-182904, February 4, 1975, overruled.

5. Member who claims mileage incident to his retirement representing the distance from his place of separation to his home of record or place of entry on active duty less the distance from his place of separation to his selected home and who has already selected a home and received appropriate allowances thereto, may receive no additional mileage allowance because he has received all that the law allows.

This action is in response to letter dated July 26, 1974, from the Assistant Secretary of the Navy (Manpower and Reserve Affairs) requesting a decision with respect to questions which have arisen as a result of 53 Comp. Gen. 963 (B-180352, June 14, 1974), concerning travel and transportation entitlements of certain members of the uniformed services. That request was forwarded to this Office by endorsement dated July 30, 1974, from the Per Diem, Travel and Transportation Allowance Committee and assigned PDTATAC Control No. 74-29.

The submission refers to 53 Comp. Gen. 963, supra, as holding that members of the uniformed services who on termination of active duty otherwise qualify for travel and transportation to either their home of record or place of entry on active duty under 37 U.S.C. §§ 404(a) and 406(a) (1970) are to be afforded such entitlements whenever their entitlement to travel and transportation to their home of selection under 37 U.S.C. §§ 404(c) and 406(g) (1970) is denied. It is stated that in attempting to implement the decision and in making appropriate changes to Volume 1, Joint Travel

Regulations (1 JTR), questions have arisen, replies to which are considered necessary before these regulations may be amended.

In order to respond to the questions presented, the development of the law as it relates to travel and transportation allowances incident to a member's retirement must be discussed.

Long before there was any specific statutory authority for travel by an officer from his last place of duty to home at Government expense upon retirement, mileage for such travel was paid under the mileage laws because such travel was considered ordered travel on official business under orders issued to the officer directing him to proceed to his home. Travel to a place selected by the officer, which he reported to proper authority as being his home, was deemed sufficient compliance with orders directing him to proceed home and, therefore, he was entitled to mileage to such selected place. From this, apparently, evolved the rule concerning an officer's right to select a home upon retirement, which was stated in 1 Comp. Gen. 363 (1922) (citing 13 Comp. Dec. 793 (1907) and 18 Comp. Dec. 634 (1912)), and restated in 4 Comp. Gen. 954 (1925). That rule was applicable to regular members of the uniformed services and was predicated on circumstances peculiar to the military service--that an officer at the time of retirement usually did not have an established residence which he desired to make his home in civilian life. For that reason some latitude was allowed Regular officers in carrying out orders to travel home upon retirement.

On the other hand, a Reserve officer, both prior to and after the enactment of section 37a of the National Defense Act, June 4, 1920, 41 Stat. 776, and section 12 of the Pay Readjustment Act of 1942, June 16, 1942, Chapter 413, 56 Stat. 364, when on active duty received mileage from his home to his first duty station and from his last duty station to his home. For Reserve officers, the word "home" was accepted without question to mean the place where the reservist resided prior to entering the military service, where he presumably would have continued to reside had such residence not been interrupted by orders to active duty, and where he expected to return when released from active duty or he retired. This place was recorded in the member's personnel file according to regulations. 33 Comp. Gen. 386 (1954).

Section 303(a) of the Career Compensation Act of 1949, October 12, 1949, 63 Stat. 813, provided for payment of travel allowances including the following provision:

> "Under regulations prescribed by the Secretaries concerned, members of the uniformed services shall be entitled to receive travel and transportation allowances for travel performed or to be performed * * * upon separation from the service, placement upon the temporary disability retired list, release from active duty, or retirement, from last duty station to home or to the place from which ordered to active duty * * * Provided, That the travel and transportation allowances under conditions authorized herein for such members may be paid on separation from the service, or release from active duty, regardless of whether or not such member performs the travel involved."

Subsequently, the Secretaries issued regulations which authorized Reserve members as well as Regular members to select a home upon retirement, which could be different from the one recorded in their personnel files, and be entitled to travel and transportation allowances to such selected home. In 33 Comp. Gen. 386, supra, it was held that there appeared to be no sufficient legal basis for such regulations for the following reason:

> "While the rule of the accounting officers that regulars may be paid mileage for travel to a selected home upon retirement has, through long application, become so engrafted in the law that it reasonably may be concluded that such selected place was the home contemplated by the Congress in enacting the Career Compensation Act of 1949, insofar as retired regulars are concerned, it is equally well established that a reservist by reason of the temporary nature of his active duty, though sometimes prolonged, has a home of record throughout his period of active duty which determines the maximum mileage payable for travel home upon release from active duty. * * *"

Subsequently, the Department of Defense, through the Secretary of the Army, proposed an amendment to section 303 of the Career

Compensation Act of 1949, H.R. 6600, the principal purpose of which was to equalize the travel and transportation entitlements of Regulars and reservists upon retirement by providing affirmative legislative authority for travel and transportation allowances to homes of selection for all members of the uniformed services upon retirement. S. Rep. No. 1221, 84th Cong., 1st Sess. 1-2 (1955); H.R. Rep. No. 967, 84th Cong., 1st Sess. 2 (1955).

Consequently, section 1 of Public Law 368 [H.R. 6600], chapter 806, act of August 11, 1955, 69 Stat. 691, amended section 303(a) of the Career Compensation Act of 1949 by inserting the following sentence immediately after the first sentence thereof:

> "'Under uniform regulations prescribed by the Secretaries concerned, a member of the uniformed services who—
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> "'(1) is retired for physical disability or placed upon the temporary disability retired list; or
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> "'(2) is retired for any other reason, or is discharged with severance pay * * *
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> may select his home for the purposes of the travel and transportation allowances payable under this subsection.'"

Section 303(a), as amended, was codified in the 1958 edition of the United States Code, as section 253(a), title 37. The act of September 7, 1962, Public Law 87-649, 76 Stat. 451, revised, codified and enacted title 37, United States Code. The purpose of the act was to restate in comprehensive form, without substantive change, the laws applicable to the pay and allowances of members of the uniformed services. As a result of this act, travel and transportation allowances for members of the uniformed services are provided currently, in sections 404(a) and 404(c), in pertinent part as follows:

> "(a) Under regulations prescribed by the Secretaries concerned, a member * * * is entitled to travel and

transportation allowances for travel performed or to be performed * * *

* * * * *

"(3) upon separation from the service, placement on the temporary disability retired list, release from active duty, or retirement, from his last duty station to his home or the place from which he was called or ordered to active duty * * *

* * * * *

"(c) Under uniform regulations prescribed by the Secretaries concerned, a member who—

"(1) is retired, or is placed on the temporary disability retired list, under chapter 61 of title 10; or

"(2) is retired with pay under any other law, or, immediately following at least eight years of continuous active duty * * * is discharged with severance pay or is involuntarily released from active duty with readjustment pay;

may * * * select his home for the purposes of the travel and transportation allowances authorized by subsection (a) of this section."

In 53 Comp. Gen. 963, supra, it was stated as follows:

"A member's right to choose a home upon being retired, after termination of active duty, is considered to be a greater benefit than is afforded to other members who are not permitted to choose their homes for entitlement purposes upon completion of active duty. Typically, a member retired after 20 years of service is entitled to this benefit, but a member who has served for only 3 years may not select his home.

> "In such circumstances, it would appear to be anomalous to deny a member with long service allowances to which he would have been entitled after completion of a short period of service, because he has been denied a greater benefit."

The decision at 53 Comp. Gen. 963, supra, was not the first specific consideration by this Office of whether applicable statutes require the denial of travel and transportation entitlements to the home of record or place of entry on active duty where the member qualified for entitlements to a home of selection. In 42 Comp. Gen. 370 (1963), we considered the question of whether a Reserve officer who is entitled to select a home may, instead, elect a mileage allowance to his home of record or place of entry on active duty. We concluded that paragraph M4157-1a, 1 JTR, providing for such a mileage allowance which specifically excepts members who qualified for entitlements to a selected home under paragraph M4158-1a, 1 JTR, was in apparent conformity with legislative intent of the appropriate statutory provisions. Accordingly, we found no basis to conclude that the member in the case presented was entitled to elect allowances to his home of record in lieu of allowances to his selected home.

In a subsequent decision, B-163248, March 19, 1968, we considered a claim for travel and transportation entitlements incident to the retirement of a member who qualified for such entitlements to a selected home. While stating that the member was not entitled to such home of selection benefits because travel to his selected home was not performed within the period prescribed by law, we further concluded as follows:

> "* * * There is no collateral right to allowances for travel to home of record or place of entry into the service, either to cover travel performed prior to that to a home of selection or as an election in lieu of the allowances to the selected home on retirement. 42 Comp. Gen. 370."

In apparent conformity with these decisions regulations have continued to exclude a member qualified for travel and transportation entitlements to a selected home under paragraph M4158, from receiving home of record entitlements under paragraph M4157.

However, in 53 Comp. Gen. 963, supra, as indicated above, we expressed a different view. In that decision it is stated that:

> "We are aware of no intention on the part of the Congress in establishing the foregoing entitlements that a member who has basic entitlement to travel and transportation at Government expense to his home of selection, but whose claim for such entitlements is denied for the reasons previously indicated, also shall be ineligible for travel and transportation allowances to his home of record or the place from which he was called or ordered to active duty."

We now believe that it is inappropriate to consider the home of record entitlement as separate and distinct from the home of selection entitlement. Section 404(c) states that a qualifying member may select a home for the purposes of travel and transportation allowances authorized by subsection (a)--which provides for travel and transportation allowances to home, or place from which called or ordered to active duty. That provision specifically affords a qualifying member the additional benefit, if he so desires, of selecting a home for the purposes of subsection (a) rather than being limited to his home as indicated by service records or to the place from which he was called or ordered to active duty.

To the extent that 42 Comp. Gen. 370, supra, and B-163248, supra, are inconsistent with 53 Comp. Gen. 963, supra, and this decision, the former decisions no longer will be followed.

With regard to the member's right to choose home of record or place of entry on active duty benefits it is stated in the submission as follows:

> "Your decision indicates that the member's right to select a home, as authorized by the statute, is a greater benefit than is afforded other members who do not qualify for such right. It would seem to follow that a member authorized the greater benefit could opt to receive normal benefits at time of termination of active duty or at

> any time thereafter within the time limit he so decides. May the regulations be amended to so provide?"

In accordance with the above a member has entitlement to travel and transportation benefits to his home of record or place of entry on active duty. Should he desire to select some other location upon retirement he may do so in accordance with such regulations as are applicable. Your question is answered accordingly.

It is stated by the Assistant Secretary that the entitlements under 37 U.S.C. § 404(c) and those under 37 U.S.C. § 406(g) relative to home of selection travel are independent of each other and if a member elects to receive allowances for personal travel under section 404(c) he must within the time limit actually perform travel thereto with the intention of establishing a residence in order to be so entitled. He may also request reimbursement for transportation of dependents and shipment of household goods to such selected home. It is further stated that provision is currently contained in the regulations (1 JTR para. M8260-1) based on rulings by this Office that household goods may be shipped within the time limit to one or more places including or excluding the home of selection provided the total cost does not exceed shipment in one lot to the home of selection. In view of the foregoing, the question presented is stated as follows:

> "* * * Question now arises as to whether that ruling is too restrictive and that he should be permitted shipment of household goods within the time limit to one or more places provided the total costs do not exceed shipment in one lot to home of selection, home of record, or place from which ordered (or called) to active duty, whichever provides the greater entitlement. * * *"

Within the limits prescribed in 1 JTR, especially paragraphs M8009, M8259 and M8260 it appears that the current regulations may be amended as indicated. This is in accord with the view that a member who is entitled to household goods transportation based on his home of selection retains the right to transportation on the basis of his home of record or place of entry on active duty.

The next question is stated as follows:

> "It also appears that the member may elect to receive travel allowances for his personal travel to his home of record or place from which called (or ordered) to active duty and may still, within the time limit, select a home at a point more distant from his last duty station for the purposes of receiving other allowances for dependents and household goods if he otherwise qualifies therefor. Your opinion as to the validity of this viewpoint is requested."

We have expressed the view that a member who is entitled to travel and transportation allowances based on his home of selection, may also be entitled to such allowances based on his home of record or place of entry on active duty.

Based on the foregoing the view indicated above appears valid. In regard to a member's personal travel, section 404(f), title 37, United States Code (1970), provides that the travel and transportation allowances authorized under section 404 may be paid on the member's separation from the service or release from active duty, whether or not he performs the travel involved. This provision first appeared in section 303(a) of the Career Compensation Act of 1949, as quoted above. On the other hand the basic provision for travel in these circumstances in 37 U.S.C.§404(a)(3) refers to a member's travel entitlements upon separation from the service, placement on the temporary disability retired list, release from active duty, or retirement. Since subsection 404(f) refers only to separation from the service or release from active duty it does not appear that the permissive authority of 404(f) was intended to include members who are retired or are placed on the temporary disability retired list. Consequently, for such members it would not be proper to issue regulations permitting payment for a member's travel without regard to its actual performance. To the extent that a contrary conclusion was reached in B-182904, February 4, 1975, that decision will no longer be followed.

In view of the above all travel and transportation entitlements upon a member's retirement are predicated on the actual performance of the travel or transportation in question. In the circumstances it would appear that payment of travel and transportation costs including payment for the member's travel should be deferred until travel or transportation actually is performed.

The Assistant Secretary of the Navy refers to 53 Comp. Gen. 963, supra, as indicating that a denial of ordinary entitlements for members otherwise authorized to select a home was not intended by Congress. Our views are requested with respect to the following statement:

> "It is presumed that the allowances in question are properly payable to all who claim them provided the statute of limitations has not nullified their claim. * * *"

The decision 53 Comp. Gen. 963, supra, in effect modified or overruled prior decisions of this Office. As such its effect, except in regard to the rights of the claimant in that decision, is regarded as prospective only and, therefore, without retroactive effect. Accordingly, claims which accrued on or after June 14, 1974, the date of that decision shall be decided on the basis of the new construction as therein stated. To the extent that decision B-182904, February 4, 1975, supra, allowed a claim for mileage for the member's travel from his place of separation to his home of record after his claim for travel and transportation entitlements to his selected home was denied, which accrued prior to June 14, 1974, that decision no longer will be followed. The question presented is answered accordingly.

The Assistant Secretary also requests clarification in the case of a member who already has selected and moved to and has been paid personal travel allowances to a place nearer to his last duty station than his home of record or place of entry on active duty. This question is stated as follows:

> "* * * While reimbursement for transportation of dependents and shipment of household goods to such a selected home is all that the law allows

when dependents travel thereto and shipment of household goods is effected to that place, it would seem that the member should be permitted to claim the excess mileage at this time to which he would have been entitled had he been aware of the option you indicate the law allows. Your decision as to whether your office would object to such claims is requested."

As stated above, claims arising prior to June 14, 1974, will be determined in accord with decisions then in effect. Regarding claims arising subsequently, consistent with our view that for members not specifically subject to 37 U.S.C. § 404(f), payment for personal travel without regard to actual performance may not be authorized. Members who travel to a home of selection may not be paid an allowance for their travel in excess of the actual distance traveled although the home of record or the place of entry on active duty is at a greater distance. As these members have received all that the law allows for personal travel, this Office would object to the payment of additional allowances in such circumstances.

It must also be noted that dependent travel is apparently limited by the provisions of 1 JTR paragraph M7000, item 13, and that, therefore, travel performed by dependents in order to qualify for reimbursement must be made in conjunction with the establishment of a residence and not merely for purposes of a visit or vacation.

It is recognized that questions may arise in specific situations with respect to the travel and transportation entitlements considered. However, this decision together with such regulations as may be issued consistent with it should provide a reasonable basis for determining the entitlements of the members involved.

R.F.KELLER

Deputy Comptroller General
of the United States