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DECISION



Charles Browne
Civ. Pers.
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20543

FILE: B-186036

DATE: JAN 26 1977

MATTER OF: Dr. Nelson L. Wolfe

DIGEST: Former commissioned officer of Public Health Service who requested separation from the service in abrogation of his agreement to serve a specified period after being trained at Government expense and who was advised that under authority of paragraph NS45) of the JTR's he would be divested of travel and transportation allowance benefits to home on separation, may not have separation orders amended retroactively to authorize reimbursement for these expenses such amending orders being inconsistent with circumstances surrounding the issuance of the original orders.

This action is in response to a letter dated September 18, 1974, from Dr. Nelson L. Wolfe, formerly a commissioned officer with the Public Health Service, appealing a settlement dated August 30, 1974, by our Transportation and Claims Division (now Claims Division), which disallowed his claim for travel and transportation expenses from his last duty station to his home of record incident to his separation from the Public Health Service in June 1965.

The record shows that in July 1964, upon entering the Commissioned Corps of the Public Health Service, Dr. Wolfe signed a dental residency training agreement in which in exchange for a year of residency training given by the Division of Hospitals, he agreed to serve a specified period thereafter with the Public Health Service. On May 20, 1965, he filed an application for separation from the Commissioned Corps of the Public Health Service even though he was still in his obligated service period. Based on that application for separation and following detailed counseling concerning all aspects of the matter, including being advised that he would lose travel benefits, Personnel Order No. 126, was issued on June 18, 1965, terminating Dr. Wolfe's appointment in the Commissioned Corps and separating him from the service effective June 30, 1965. Subsequent to the issuance of those orders but before their effective date, Dr. Wolfe apparently further considered his action and on June 28, 1965, filed a request that the June 18 separation order be cancelled. Action to cancel those orders was not taken upon this request and he was separated

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on June 30, 1965, without being reimbursed for his travel and transportation expenses to his home of record.

In January 1973, Dr. Wolfe contacted the Public Health Service and requested a review of the circumstances surrounding his separation so that he would be entitled to his travel and transportation expenses. The Commissioned Personnel Operations Division of the Public Health Service, acting on this request, conducted an investigation and concluded that Dr. Wolfe's service had been inadvertently terminated. As a result, Personnel Order No. 058,005, dated February 12, 1973, was issued to amend his 1965 separation order in an effort to authorize travel and transportation allowances for him and his family to his home of record.

Following issuance of those amending orders, Dr. Wolfe entered a claim for travel and transportation expenses incurred incident to his home of record travel on separation.

It is well established that legal rights and liabilities with regard to travel allowances vest as and when travel is performed under orders and that such orders may not be revoked or modified retroactively so as to increase or decrease the rights which have accrued or become fixed, after the ordered travel has already been performed. An exception to this rule has been recognized when an error is apparent on the face of the original orders, or all facts and circumstances surrounding the issuance of such orders clearly demonstrate that some provision which was previously determined and definitely intended had been omitted through error or inadvertence in preparing the orders. However, that which is changed or supplied must be consistent with the basic thrust of the orders as issued. 23 Comp. Gen. 713 (1944); 24 Comp. Gen. 439 (1944); 44 Comp. Gen. 405 (1965); 48 Comp. Gen. 119 (1968) and 55 Comp. Gen. 1241 (1976).

The personnel order of June 18, 1965, as it related to Dr. Wolfe, states that he was released from assignment on June 30, 1965, and that his appointment in the Commissioned Corps of the Public Health Service was terminated that same date. That order did not provide travel authorization for Dr. Wolfe. Thus, it is evident that considering the nature of his separation, the orders as written were complete.

Paragraph M6457 of the Joint Travel Regulations provides that when a member of the Public Health Service or Public Health Service Reserve on active duty resigns or is released from active duty at his own request prior to completion of a specified period of service

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for which he has voluntarily agreed in writing to serve, the Secretary of Health, Education and Welfare may at his discretion vest entitlement to any or all travel and transportation allowances to which such member would otherwise be entitled.

The material in the file is replete with references to the fact that the member was counseled that since he would be abrogating his agreement to serve in the Public Health Service following completion of residency training at Government expense, under the authority contained in paragraph M6457 of the Joint Travel Regulations, he would lose his travel and transportation benefits to his home of record. Although he was so advised, Dr. Wolfe persisted in his request. He did not make any effort to request cancellation of those orders until 48 hours before his separation. In response to his cancellation request, Dr. Wolfe was advised by the Chief of Personnel that it was too late. In these circumstances and since there was no requirement that Dr. Wolfe's June 28 request be granted, it is our view that that which was omitted (travel authorization) was definitely intended by the Chief of Personnel at the time the June 18 orders were issued. That is, that Dr. Wolfe was to be denied travel and transportation entitlements on separation. Since no action was taken to amend his orders prior to his separation to allow such entitlement, the amending orders of February 12, 1973, being inconsistent with the circumstances surrounding the issuance of the original orders, do not provide a basis upon which reimbursement for travel and transportation expenses in Dr. Wolfe's case may be authorized.

Accordingly, the action taken by our Claims Division disallowing the claim is correct and is sustained.

R.F. MILLER

Deputy Comptroller General
of the United States