

DECISION



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

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FILE: B-186440

DATE: JUL 6 1976

MATTER OF: S. Sgt.

USA

DIGEST: A member of the Armed Forces who, on permanent change of station to an overseas location on a "with dependents tour" but concurrent travel of dependents is not authorized and who brings his dependent to his overseas station shortly after his arrival, is not entitled to reimbursement for such travel since in accordance with 1 JTR M7000-16 member did not have sufficient service time remaining in his enlistment to permit command sponsorship of dependent. The fact that member subsequently extended his term of service does not qualify member to transportation of dependent at Government expense since Rule 6 of Table 4-1, AR 601-280 requires that the action approving command sponsorship must be taken prior to travel of dependent.

This action is in response to a letter dated March 8, 1976, from Staff Sergeant , USA, , requesting reconsideration of our Transportation and Claims Division (now Claims Division) settlement of March 2, 1976, which disallowed his claim for reimbursement for transportation of his dependent wife from the United States to Germany in December 1973 incident to an ordered overseas permanent change of duty assignment.

The record shows that by Special Orders Number 331, dated November 27, 1973, issued by Headquarters U.S. Army Personnel Center, Fort Dix, New Jersey, the member was directed to proceed on permanent change of station to the VII Corps (W24A1AB), APO New York 09061, with a port call date of December 18, 1973, and an overseas unit of assignment reporting date of December 20, 1973. Special instructions contained in the orders stated

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that the member was to serve a "with dependents tour" and would comply with, among other items, items 26 and 28 of Department of Army Supplemental Instructions/Appendix B, Army Regulations (AR) 310-10. Item 26 of those instructions provides that concurrent travel of dependents is not authorized and item 28 provides that family separation allowance, shipment of household goods and movement of dependents to a designated location is authorized.

By Special Orders Number 353, dated December 20, 1973, issued by Headquarters, 21st Replacement Battalion, Special Orders Number 331 was amended by changing the member's unit of assignment to HHC VII Corps (WAT8AAA), APO 09107, with a reporting date of December 23, 1973.

It appears that shortly after Sergeant arrival at his new assignment in Germany, he obtained a "Military Standby Authorization for Commercial Air Travel" from his company commander, for the purpose of transporting his wife to his overseas duty station. The member's wife traveled to Germany on a U.S. commercial airline on December 30, 1973. He now seeks reimbursement in the sum of \$118.70, representing the cost of that travel.

The member contends that he was informed at Fort Dix, New Jersey, prior to his departure for Germany, that if he brought his wife over later, he could be reimbursed. In addition he has stated that he was under the impression that obtaining his company commander's signature on a form permitting travel on commercial airlines at reduced rates was authorization for travel for which he would be reimbursed.

The record further shows that on January 14, 1974, the member requested that his wife, who was then in Germany, be recognized as command sponsored. This initial request was returned for corrective action since it appeared that the member had insufficient service time remaining in his enlistment in order to complete the minimum overseas tour to permit command sponsorship of dependents. Thereafter, the member extended his enlistment as required by AR 601-280 and on June 25, 1974, his request for command sponsorship was approved.

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The statutory authority for transportation of dependents of members of the uniformed services (37 U.S.C. 406 (1970)), expressly provides that transportation of dependents at Government expense upon a member's ordered change of permanent station shall be subject to such conditions and limitations, for such grades, ranks, and ratings, and to and from such places as the Secretaries concerned may prescribe. Thus, the law which authorizes travel of dependents at Government expense does not grant that right in derogation of the administrative authority conferred upon the military departments so as to permit a member to transport his dependents to his new duty station without regard to military considerations. Under this concept, it has long been recognized that the right to transport dependents of military personnel at Government expense upon an ordered change of station is not absolute, but may be administratively suspended or denied for reasons of military necessity or expediency. If travel is suspended or denied and if a member nevertheless transports his dependents at personal expense he may not be reimbursed the expenses so incurred. v. United States, 76 Ct. Cl. 507 (1932); 35 Comp. Gen. 61 (1955); and 47 Comp. Gen. 445 (1968).

Regulations governing reimbursement for travel of dependents promulgated pursuant to the before-cited law are contained in chapter 7, Volume 1 of the Joint Travel Regulations (1 JTR). Paragraph M7000-16 of the regulations provides that transportation of dependents to a station outside the United States is not authorized in the case of a member whose unexpired term of service is less than the prescribed overseas tour for the area involved unless the member voluntarily extends his term of service.

Army Regulation 55-46, paragraph 5 (change 12, June 15, 1973), in effect at the time of the member's travel to Germany, provided that, if otherwise proper under the JTR's, commanders could authorize dependents to accompany or join their military sponsor overseas at Government expense but only when the sponsor fulfilled the requirements listed in paragraphs (1) through (4). In the case of requirements (3) and (4) of that paragraph, the sponsor was required to exercise the appropriate option provided for in paragraph 6 of those same regulations after it was determined that concurrent travel would be approved or the waiting period for housing was known.

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Subparagraph (3) provides:

"Has sufficient remaining service to complete the overseas tour prescribed for accompanied personnel in the area to which assigned."

Paragraph 6 of AR 55-46 provides in pertinent part:

"6. Sponsors with insufficient remaining service to qualify for overseas movement of dependents. Military sponsors who do not meet the service requirements of paragraph 5a(3) or (4) may overcome this disqualification by taking an appropriate action indicated below.

* * * * *

"b. Enlisted members otherwise entitled to transportation of dependents at Government expense who have an established date of separation which does not permit completion of the prescribed accompanied overseas tour will qualify by taking an appropriate action authorized in chapter 4, AR 601-280."

Army Regulation 601-280, chapter 4 (change 7, November 30, 1973), in effect at the time of the member's travel, provides in paragraph 4-1a:

"Enlisted members of the Regular Army who have insufficient service remaining on current enlistment to satisfy service requirements will be afforded the opportunity or required, as appropriate, to take authorized actions indicated below to provide for continued service. * * *"

Rule 6, Table 4-1, AR 601-280, provides that if a member requests an extension while serving in an overseas area and is qualified for movement of dependents, but has insufficient service remaining to complete the prescribed accompanied tour for the area to which assigned, then the extension is to be limited to the minimum time needed to achieve its purpose. However, such action must be taken prior to being granted approval for nonconcurrent travel of dependents.

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Thus, under the before-cited regulations, unless those service requirements are met and then approval for dependent travel is given, such dependent does not qualify as command sponsored for the purpose of entitlement to travel at Government expense incident to a member's overseas permanent duty station assignment.

In the present situation, since the member's dependent had traveled to Germany before he extended his service time and well before her presence in Germany was approved as command sponsored, the member is not entitled to be reimbursed for the cost of her transportation to Germany.

In the settlement of claims against the United States, this Office must comply with the applicable provisions of the governing law and regulations. The fact that a member may have acted in good faith and in reliance on erroneous administrative representations does not afford a legal basis to allow a claim. Accordingly, the settlement of March 2, 1976, is sustained.

R.F. KELLER

Deputy Comptroller General
of the United States