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Irwin Richman
Mil. Pers.

DECISION



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

FILE: B-187676

DATE: January 31, 1977

MATTER OF: Staff Sergeant John A. Janssen, USA, Retired

DIGEST: Reimbursement of expenses incurred by retired member for travel of wife from Germany to New York by foreign air carrier is prohibited by paragraph M2150 of the Joint Travel Regulations in the absence of an official determination that travel involved could not have been performed on a ship or aircraft registered under the laws of the United States.

This action is in response to a letter dated September 14, 1976, from Staff Sergeant John A. Janssen, USA, Retired, requesting reconsideration of that part of a settlement dated August 16, 1976, by the Claims Division of this office, which disallowed his claim for reimbursement for the cost of his wife's transoceanic travel by foreign air carrier from Germany to the United States incident to his retirement from the United States Army.

By Letter Order Number E-09-129 dated September 27, 1973, the member was relieved from active duty on December 31, 1973, and placed on the retired list effective January 1, 1974. These retirement orders (which authorized travel to home of selection and completion of travel within one year) were amended by orders dated October 18, 1973, authorizing concurrent travel for the member's wife incident to his retirement. These orders also stated that "US Army members and dependents may travel at personal expense by US Flag Air Carrier over any route they choose and claim reimbursement."

The record shows that the member's wife traveled from Ludwigsburg, Germany, to Las Cruces, New Mexico (home of selection), by Lufthansa, a foreign air carrier, and privately owned automobile between December 19 to 26, 1974.

By voucher dated August 16, 1976, our Office authorized payment of \$151.27 to the member for a portion of such travel. This settlement represented a monetary allowance in lieu of transportation for travel of dependent wife from Ludwigsburg to Stuttgart, Germany (7 miles at \$.07) and from JFK Airport, New York, to Las Cruces, New Mexico, home of selection (2154 miles

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at \$.07) incident to the member's retirement and travel to home of selection. No reimbursement was authorized therein for the travel performed by foreign air carrier.

In his request for reconsideration the member seeks reimbursement for the cost (\$368.80) of his wife's travel by Lufthansa airline from Germany to New York.

Section 406 of title 37, United States Code (1970), provides in subsection (g) that under regulations prescribed by the Secretaries concerned, a member who is retired, is entitled to transportation for his dependents to the home selected under 37 U.S.C. 404(c). In accord with the foregoing, paragraph M7010-1a of the Joint Travel Regulations (JTR), provides that a member will be entitled to the transportation of his dependents from his last permanent duty station to his home of selection.

However, paragraph M7000-8 of these regulations provides that members of the uniformed services are entitled to transportation of dependents at Government expense (which includes travel to home of selection incident to retirement), except for any portion of travel performed by a foreign vessel or airplane if American registered vessels or airplanes are available by the usually traveled route.

The restriction against the use of foreign registered aircraft is specifically set out in paragraph M2150 of the regulations. Under that paragraph, the use of vessels or aircraft registered under the laws of the United States is required, unless determined impractical or not available, for all travel or transportation outside the continental limits of the United States. It also specifies that where the authority issuing travel orders determines that the use of vessels or aircraft registered under the law of the United States would seriously interfere with or prevent the performance of official business, such authority may authorize the use of vessels or aircraft of foreign registry. It further provides that such a determination may not be based on mere inconvenience or a short delay in awaiting transportation by vessels or aircraft of United States registry. In this connection, it is to be noted that an American carrier was available for the trans-oceanic travel from Germany to New York.

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The issue here involves the basic purpose and intent of the regulations requiring Government authorized travel to be aboard American vessels and airplanes. That purpose was to deal specifically with competition encountered by United States shipping and airline operators with foreign operators, which competition was felt to be discriminatory and unfair. Many of the foreign carriers were heavily subsidized by their governments and together with lower labor costs could provide lower shipping charges and fares than United States carriers. To assist the American operators, members of the Armed Forces and their dependents have been required for many years to use United States carriers when Government transportation is not utilized. However, foreign commercial travel is authorized if service provided by United States carriers is unavailable. No such showing has been made in the present case. See in this connection 46 U.S.C. 1241 (1970) and 22 U.S.C. 2123(b).

Consequently, reimbursement of any part of the expenses incurred by the member for travel of his wife by Lufthansa airline is clearly prohibited in the circumstances presented.

Accordingly, the action by our Claims Division in disallowing the member's claim for reimbursement of foreign air fares is sustained.

For the


Comptroller General
of the United States



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

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JAN 31 1977

The Honorable Pete V. Domenici
United States Senator
Southwest Regional Office
116 East Federal Building
Las Cruces, New Mexico 88001

Dear Senator Domenici:

Further reference is made to your communication dated September 15, 1976, with enclosures, concerning the claim of Staff Sergeant John A. Janssen, USA, Retired, 1330 Eucalyptus Drive, Las Cruces, New Mexico 88001, for reimbursement of his wife's travel from Ludwigsburg, Germany, to Las Cruces, New Mexico, incident to his retirement from the United States Army.

Enclosed herewith is a copy of our decision B-187676, of today, which sustains the disallowance of Sergeant Janssen's claim for the reason that his wife's travel was by foreign air carrier to the United States and that under the law, reimbursement for such travel is prohibited.

We regret that a decision more favorable to your constituent could not be reached. The enclosures forwarded by your office are returned herewith as requested.

Sincerely yours,
Paul G. Dombing

For the Comptroller General
of the United States

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