

DECISION

DIGEST - L - Mil

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

672

FILE: B-188212

DATE: MAR 17 1977

MATTER OF: Lieutenant [REDACTED]
USN (Retired)

DIGEST: Where member and his dependents traveled to Cripple Creek, Colorado, within 1 year of his retirement, bought realty there and then proceeded to Virginia Beach, Virginia, where they took shipment of their household goods and continue to reside, travel and transportation allowances authorized by 37 U.S.C. § 404 and 406 (1970), for travel to Cripple Creek may not be paid since member lacked necessary intent to establish home at Cripple Creek.

This action is in response to a letter from Lieutenant [REDACTED], USN (Retired), [REDACTED], appealing a settlement of our Claims Division dated March 29, 1976, denying his claim for travel and transportation allowances for certain travel he performed with his dependents following his retirement from the Navy.

Lieutenant [REDACTED] was retired from the Navy effective April 1, 1974, under the provisions of 10 U.S.C. § 6323V(1970). He placed his household effects in nontemporary storage pending his selection of a retirement home. Between April 1, and August 7, 1974, Lieutenant [REDACTED] and his dependents traveled from Indian Head, Maryland, the site of his retirement, to Cripple Creek, Colorado. On August 7, 1974, [REDACTED] and his wife purchased a piece of real property in Cripple Creek. The [REDACTED] then proceeded to Virginia Beach, Virginia, because, according to Lieutenant [REDACTED], some problems had arisen in connection with their rental property there. The situation in Virginia Beach was apparently such that the [REDACTED] decided to remain there, and therefore had their household effects delivered to them there in January 1975. They apparently were still residing at Virginia Beach as of the date of Lieutenant [REDACTED] appeal.

Lieutenant [REDACTED] claims that he is entitled to travel and transportation allowances for the travel he performed with his dependents to Cripple Creek. He argues that he selected Cripple Creek as his retirement home, completed travel there

djb

B-188212

within 1 year of the date of his retirement, and therefore has fulfilled all requirements for entitlement to allowances for this travel.

The statutory provisions authorizing payment of the type of allowances in question are contained in 37 U.S.C. 404 with respect to the member's travel and 37 U.S.C. 406 with respect to the transportation of the dependents and household goods. Those provisions authorize member's travel and transportation costs to a home of selection if selection is made within 1 year of retirement.

The regulations implementing those provisions, as in effect during the period in question, provide that a member retired under circumstances such as those in Lieutenant [REDACTED] case, is entitled to allowances for the travel of his dependents and himself from his last duty station to his home of selection, provided that this travel is completed within 1 year of retirement. Joint Travel Regulations, Vol. 1 (1 JTR) pars. M4158-1a, M4158-2a, and M7010-1a. Home of selection is defined in the JTRs as " * * * the place selected by a member as his home upon retirement * * * ." See 1 JTR par. M1150-3b as in force at the time in question and the current provision in Appendix J to those regulations.

The purpose of these statutory and regulatory provisions is to authorize travel at Government expense for a member and his dependents to the place to which he goes to reside following his retirement. However, until the member selects the site of his post-retirement residence, and travels there for the purpose of commencing residence, he accrues no right to the allowances for travel authorized under these laws and regulations. 36 Comp. Gen. 774, 776 (1957); B-183344 May 18, 1976. More particularly, we stated in 52 Comp. Gen. 242 (1972), a case involving facts similar to those in this case, at page 244:

"The intent to establish a home at the selected place, at the time of travel thereto by a member, is a necessary condition precedent to the right to travel and transportation allowance to such place. The best evidence, of course, that the travel for which a member seeks reimbursement was to a place selected by him as his home, is his actual and continued residence at that place.

8-188212

When, however, a member does not clearly establish his intention by taking up an extended residence at the place to which mileage is claimed, but continues to reside elsewhere, his intent necessarily must be inferred from the ~~surrounding~~ ~~circumstances~~. In cases where a member's stay in a particular place does not exceed the span of an ordinary visit, vacation or business trip, the conclusion, in the absence of other clear and convincing evidence to the contrary, is that the travel involved was not travel to a selected home within the contemplation of the Joint Travel Regulations."

While Lieutenant [REDACTED] may contemplate establishing his residence at Cripple Creek, since he and his family did not remain after their travel and purchase of real property there, but instead proceeded to Virginia Beach, where they established a residence and continue to reside, we must conclude that their travel to Cripple Creek was without the requisite current intent to establish a retirement home, and thus was not such travel as would entitle Lieutenant [REDACTED] to travel and transportation allowances. Accordingly, payment of the travel and transportation allowances claimed is not authorized and the settlement of March 29, 1976, is sustained.

However, since Lieutenant [REDACTED] and his dependents apparently did travel to Virginia Beach, Virginia, within 1 year of his retirement, and since they established a residence there, an appropriate claim from him for reimbursement based on travel and transportation to that place would be for allowance.

A. J. KELLER

Deputy Comptroller General
of the United States