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DECISION

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

Herbert Cp

FILE: B-191230 DATE: April 24, 1978

MATTER OF: Lawrence Lindner- Dependents - Child born after employee reports to new duty station

DIGEST: Wife of transferred employee could not travel with him to new duty station due to pregnancy. Employee therefore reported for duty at new station before child was born. Travel expenses for infant's travel to new station may not be paid because infant was not member of employee's immediate family within meaning of FTR para. 2-1.4d. However, GAO favors change in regulation to authorize travel costs of infant born after employee reports to new station if wife's prior travel is precluded by pregnancy.

By a letter dated February 2, 1978, Mr. H. Larry Jordan, an authorized certifying officer in the Department of Agriculture, requested our decision concerning a voucher submitted by Mr. Lawrence Lindner for additional travel expenses for his family incident to a permanent change of station.

The record indicates that by a travel authorization dated March 18, 1976, Mr. Lindner, an employee of the Department of Agriculture, was ordered to transfer from Encampment, Wyoming, to Grangeville, Idaho. The travel order authorized travel expenses for Mr. Lindner and his wife. Mr. Lindner reported for duty at his new official station in April 1976. His wife, however, did not accompany him to the new station at that time because she was then pregnant and unable to travel. A statement in the record signed by Robert M. Shine, M.D. on November 16, 1976, indicates that Mrs. Linnder "had deep vein pulmonary thrombosis prior to her pregnancy and during her pregnancy was on Heparin therapy daily. It was not possible for her to travel during her pregnancy and could not move to Idaho until after she delivered." On May 20, 1976, Mr. Lindner's travel orders were amended to read "Family consists of self, wife-Becky, and to include one infant (unborn at the time authorization written)." The

child was born on June 5, 1976, and Mr. Lindner's family completed permanent change-of-station travel on June 20-21, 1976.

Mr. Lindner has been reimbursed for the travel expenses which he and his wife incurred while performing permanent change-of-station travel. In addition, he has submitted a claim in the amount of $45.82, representing per diem and additional mileage for the infant's travel. Mr. Lindner's claim for the infant's travel was administratively denied based upon paragraph 2-1.4d of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). At the time of Mr. Lindner's transfer, that paragraph provided as follows:

> "Immediate family. Any of the following named members of the employee's household at the time he reports for duty at his new permanent duty station or performs authorized or approved overseas tour renewal agreement travel or separation travel: spouse, children (including step-children and adopted children) unmarried and under 21 years of age or physically or mentally incapable of supporting themselves regardless of age. or dependent parents of the employee and of the employee's spouse."

Since Mr. Lindner's child was not yet born when he reported for duty at his new permanent station in April 1976, the agency disallowed the claim on the ground that the child could not be included within the definition of "immediate family." Mr. Lindner has resubmitted his claim based upon our decision in B-164940, July 16, 1969. In that decision the travel of the dependents of the employee (wife and 2-1/2 year old daughter) was delayed because of the imminent birth of another child. However, in claiming reimbursement of travel of the dependents by privately-owned automobile after the birth of the child the employee only claimed reimbursement for travel of two members of his family. The question presented for our consideration is whether a transferred employee may claim travel expenses

for a child who was unborn at the time the employee reported to the new duty station where the wife had been unable to travel because of the pregnancy.

We previously considered this question at 50 Comp. Gen. 220 (1970) in connection with the transportation of the dependents of military personnel. There, we held that such transportation is generally limited to such persons as are dependent on the member on the effective date of the change-of-permanent-station orders. However, we further held:

> "Having in mind the beneficial purposes of the statute, and notwithstanding the fact that no transportation cost would be incurred for the child if the mother traveled to the new station prior to its birth, we would not be required to object to the promulgation of regulations authorizing reimbursement for the cost of travel to the member's new station of his child born after the effective date of his change-of-station orders if his wife's travel to the new station at Government expense prior to the birth of the child is precluded by departmental regulations due to the advanced stage of her pregnancy."

Based upon that decision, the definition of "dependent" in Appendix J to Volume 1, Joint Travel Regulations, was revised to include such after-born children, as follows:

> "2. a member's unmarried legitimate child under 21 years of age (an infant born after the effective date of permanent change-of-station orders will also be considered a dependent when the travel of the mother to the new station at Government expense prior to the birth of the child was precluded by Service regulations because of the advanced state of the mother's pregnancy)."

With respect to the relocation benefits of transferred civilian employees, 5 U.S.C. § 5724(a)(1) and § 5724a(a)(1) (1970) provide respectively for the transportation expenses and per diem of the employee's immediate family. The term "immediate family" is not statutorily defined for these purposes. As noted above, however, FTR paragraph 2-1.4d defines that term to include certain persons who are members of the employee's household at the time he reports for duty at his new permanent duty station. Unlike the Joint Travel Regulations, no special provision is made for the inclusion of an infant born after the employee reports for duty at his new station. The Federal Travel Regulations have the force and effect of law and cannot be waived by this Office. Since Mr. Lindner's infant was not born until after he reported for duty at Grangeville, Idaho, the infant was not a member of his immediate family within the meaning of FTR paragraph 2-1.4d. Further, our decision in B-164940, supra, does not compel a contrary result. That decision merely authorized reimbursement of separate travel of an employee's dependents when their travel was delayed due to the pregnancy of the employee's wife. The last paragraphs of that decision state:

> * * * * In other words the employee would be entitled to 6 cents per mile for his own travel on September 22, 1968, and, in addition, to the rate which would have been applicable as though his family had traveled separately. For two members of the family the rate is 8 cents per mile and for three members the rate is 10 cents per mile. The employee has only claimed 8 cents per mile for two members.
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> "The voucher, with attachments, is returned herewith and may be certified for payment."

Thus, the decision clearly holds that the voucher submitted by the employee may be certified for payment. Although citing certain rates for mileage, we clearly noted that the employee claimed mileage only at the rate of 8 cents per mile, which was the rate for two family members.

Since we authorized payment for th[illegible]'s wife and older daughter, our decision in B-164[illegible]0 does not provide authority for payment of the travel exp[illegible]s of the infant born after the employee reported for duty at the new station.

In view of the above, [illegible] voucher may not be certified for payment. However, in view of the beneficial purposes of the statutes authorizing payment of relocation expenses of transferred employees and the present practice with respect to members of the uniformed services, we are recommending that the General Services Administration promulgate regulations specifically authorizing reimbursement for the expenses of travel of a child born after the employee reports to his new duty station if his wife's travel to the new station prior to the bir[illegible] of the child is precluded by reason of her pregnancy.

R. F. Keller

Deputy Comptroller General
of the United States

Accordingly, as noted in our decision of today, in view of the beneficial purposes of the statutes authorizing payment of relocation expenses of transferred employees and the present practice with respect to members of the uniformed services, we favor the promulgation of regulations by the General Services Administration authorizing reimbursement for the cost of travel to the employee's new station of a child born after the employee reports there for duty if his wife's travel to the new station at Government expense prior to the birth of the child is precluded by reason of her pregnancy.

Sincerely yours,

R.F. KELLER

Deputy Comptroller General
of the United States

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

B-191230

APR 24 1978

Mr. Ciro P. Farina
Assistant Commissioner for Transportation
and Public Utilities
General Services Administration
Federal Supply Service
Crystal Mall, Building 4
Washington, D.C. 20406

Dear Mr. Farina:

We refer to our decision of today, Lawrence Lindner, B-191230, copy enclosed, regarding the definition of the term "immediate family" for purposes of relocation benefits.

Our decision concerns the travel expenses of an infant born at the old station after the employee has reported for duty at the new station. The employee's wife had been precluded by reason of the pregnancy from making change-of-station travel until after the child had been born. Based upon the definition of "immediate family" set forth in paragraph 2-1.4d of the Federal Travel Regulations (FPMR 101-7, May 1973), we denied the employee's claim. Denial was required because the child had not been born at the time the employee reported for duty at his new station

We note, however, that a prior decision of this Office, 50 Comp. Gen. 220 (1970), suggested with respect to members of the uniformed services that regulations could be promulgated authorizing reimbursement of expenses of travel to the member's new station of a child born after the effective date of his change-of-station orders if his wife's travel prior to the birth of the child is precluded by the advanced stage of her pregnancy. Based upon that decision, such authorization was made possible by the definition by the term "dependent" as prescribed in Appendix J to Volume 1, Joint Travel Regulations.