

P. L. II

DECISION



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

9339

FILE: B-193167

DATE: March 2, 1979

MATTER OF: Charles E. Ward, Jr.

per name

- DIGEST:
1. A retired member of the Army who selects Isfahan, Iran, as his home of selection incident to his retirement, is not entitled to travel and transportation expenses for that portion of travel paid by a private company, but travel from last permanent duty station, Buenos Aires, Argentina, to authorized separation location, Fort Jackson, South Carolina, and to what would be the appropriate port of embarkation for overseas travel may be at Government expense.
 2. Travel expenses for dependent travel of retired member to home of selection outside the United States are limited to travel from the last permanent station to the appropriate aerial port of embarkation for overseas travel, under 1 Joint Travel Regulations (1 JTR) when the air travel expenses are paid by a private company.

This action is the result of an appeal from a settlement issued by our Claims Division disallowing the claim of Lieutenant Colonel Charles E. Ward, Jr., for personal and dependent travel from Buenos Aires, Argentina, to Jackson, Mississippi, incident to his retirement on April 30, 1974. ↘

That settlement is modified in accordance with the following.

Colonel Ward had a mandatory retirement date of April 30, 1974. As a result he was directed by orders dated January 25, 1974, to report to Fort Jackson, South Carolina, an authorized separation point with temporary duty en route at Fort Hood, Texas. The temporary duty was permissive to be performed at no expense to the Government. The orders authorized concurrent travel for his dependents to the continental United States and was accomplished under a transportation request from Buenos Aires, Argentina, to Miami, Florida. A travel voucher submitted by Colonel Ward indicates that he traveled with his dependents from Miami, Florida, to Jackson, Mississippi, and continued by himself to Fort Hood. On May 26, 1974, he returned to Jackson and traveled with his dependents by car to Fort Hood. All

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of the travel from Miami to Fort Hood was performed at his expense. Colonel Ward was retired at Fort Hood, Texas, on April 30, 1974, presumably for his own convenience since Fort Jackson, South Carolina, was the authorized separation location designated in his orders.

Following his retirement, Colonel Ward was employed by Bell Helicopter International (Bell) for employment in Isfahan, Iran. On May 30, 1974, he traveled to Iran from Dallas, Texas, and on July 27, 1974, his family traveled to Iran from Dallas. All expenses for transportation to Iran from Dallas for Colonel Ward and his dependents were paid by Bell. *orig. con.*

By letter dated May 5, 1975, to the Commanding Officer, U. S. Army Finance Center, Colonel Ward indicated that he preferred not to select a home of retirement at that time. However, if selection of a home was necessary under the regulations he preferred to select Iran, or in the alternative if that was not possible Jackson, Mississippi.

The United States Army Finance Support Agency, Retired Pay Operations, did not pay any expenses for Colonel Ward and his dependents, other than the transportation request, beyond travel to Miami, Florida, because it was not certain whether the member actually performed travel to a bona fide residence for retirement.

Our Claims Division determined that the record did not support the view that Jackson, Mississippi, was Colonel Ward's retirement residence and no expenses for travel and transportation to that city were payable.

On appeal from that settlement, Colonel Ward states that he believes he is entitled to relocation expenses to Gulf Breeze, Florida, where he has established his retirement residency on his return from Iran and also reasserts his claim for personal and dependent travel expenses from Miami, Florida, to Fort Hood, Texas.

At the outset, we will deal with Colonel Ward's claim for personal and dependent travel from Miami, Florida, to Fort Hood, Texas.

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Paragraph M4158 of Volume 1, Joint Travel Regulations (1 JTR), provides that a member who is authorized as distinguished from directed to travel from his last permanent duty station to a processing station of his own choice and for his own convenience, and from such processing station to home of selection will be entitled to the travel and transportation allowances not to exceed those he would have received if he had been ordered to the appropriate processing station as set forth in service regulations.

Since Colonel Ward's temporary duty at Fort Hood was permissive only and to be performed at no expense to the Government and the appropriate processing station in his case was Fort Jackson, South Carolina, he is entitled to mileage for himself from Miami, Florida, to Dallas, Texas, not to exceed the mileage which would be payable from Miami to Fort Jackson, South Carolina.

Paragraph M7010-1a, JTR, provides that a member on active duty who is placed on the retired list will be entitled to transportation of his dependents from his last duty station, or the place to which they were last transported at Government expense, to the home selected by the member for entitlement to travel and transportation allowances for his travel.

In this connection it has been held that where a member is completely detached from his overseas assignment and he is assigned to a location in the continental United States for the purpose of separation processing, in view of the character of the assignment and its limited duration, such assignment is regarded as temporary in nature. 53 Comp. Gen. 44 (1973). An assignment in connection with separation processing clearly does not constitute a permanent change of station (PCS) for which transportation of dependents is authorized. There is no authority for dependent travel to a separation facility. See B-173236, September 30, 1971.

Thus, no authority exists for payment of transportation expenses of Colonel Ward's dependents to Fort Hood, since that was only a temporary duty station at which he performed duty at no expense to the Government. Nor does authority exist for the payment of such expense to Fort Jackson, the authorized separation processing location.

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Sections 404(c) and 406(g) of title 37, United States Code (1970), provide that under regulations prescribed by the Secretaries concerned, a member who is retired in certain circumstances may select a home for the purposes of travel and transportation entitlements if the selection is made within 1 year of retirement. He is then authorized travel and transportation for himself, his dependents and household effects to the home selected.

Paragraph M4158 of 1 JTR, in effect at the time, which implements section 404(c) of title 37, United States Code, provides in subparagraphs 1a and 2a that a member on active duty who is retired may select his home and be entitled to travel and transportation allowances thereto from his last duty station within 1 year after termination of active duty. Paragraph M7010-1a, 1 JTR, contains similar provisions authorizing payment for the travel of dependents to the home selected by the member in accordance with paragraph M4158. In this respect, paragraph M1150-3(b), 1 JTR (in effect at the time) defines "home of selection" as used in these regulations to mean the place selected by the member as his home upon retirement.

The purpose of the before-mentioned statutes and regulations is to authorize travel at Government expense for a member and his dependents and transportation of household goods to the place where he goes to reside following retirement. Unless that place has been selected and travel to it for that purpose has been performed, no right to travel and transportation allowances accrues. See 36 Comp. Gen. 774 (1957).

Since neither Colonel Ward nor his dependents traveled to Jackson, Mississippi, or Gulf Breeze, Florida, following his retirement for the purpose of establishing a bona fide retirement residence, within 1 year of his release from active duty, those places may not be considered his home of selection. B-191550, August 11, 1978; and 52 Comp. Gen. 242 (1972).

On the basis of Colonel Ward's letter of May 5, 1975, we must consider Isfahan, Iran, to be his home of selection since he actually traveled there with his dependents and established a residence within 1 year of his release from active duty as required by applicable regulations.

Paragraph M4159-1, 1 JTR, provides that a member traveling under PCS orders (including separation from the service or relief from active duty) to, from, or between points outside the United States which orders did not specify group travel or direct travel by a specific mode of transportation will be entitled to:

- "1. the allowances prescribed in par. M4150 or M4154, as applicable, for the official distance between the old permanent station and the appropriate aerial or water port of embarkation serving the old duty station;
- "2. transportation by Government aircraft or vessel, if available, otherwise Government procured transportation or reimbursement for transportation procured at personal expense for the transoceanic travel involved * * * and
- "3. the allowances prescribed in par. M4150 or M4154, as applicable, for the official distance between the appropriate aerial or water port of debarkation serving the new station and the new permanent station."

Paragraph M7010-1a, 1 JTR, provides that a member on active duty who is placed on the retired list will be entitled to transportation of dependents from his last permanent duty station, or the place to which they were last transported at Government expense to the home selected by the member for entitlement to travel and transportation allowances for his travel in accordance with paragraph M4158, 1 JTR.

With regard to the transoceanic travel performed by Colonel Ward and his dependents, paragraph M4159-1, item 2, authorizes reimbursement of expenses only when Government transportation or Government procured transportation is not available and the transportation is procured at personal expense.

Since Bell paid for the transportation from Dallas, Texas, to Isfahan, Iran, for both Colonel Ward and his dependents, he did not incur any personal expense. Accordingly, he is not entitled

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to any travel and transportation expenses for this portion of the journey. See B-188942, December 6, 1977, and cases cited therein.

However, paragraph M4159-1, item 1, quoted earlier does provide for the payment of mileage for the official distance between the old permanent station and the appropriate aerial or water port of embarkation serving the old station. Since the member was authorized to travel to Fort Jackson, South Carolina, for separation he may be paid mileage at the rate in effect at that time from there to Charleston, South Carolina, the appropriate aerial port of debarkation. See 1 JTR, para. M4159-6.c.1.

As we noted, dependent travel under paragraph M7010-1a, 1 JTR, is authorized only from the last permanent duty station to the home of selection. Thus, Colonel Ward's entitlement for his dependent's travel should be based on the cost of travel from Buenos Aires, Argentina, to Isfahan, Iran. It appears that the concurrent travel of his dependents to the continental United States was authorized in the orders on the presumption that he would select a home in the United States.

Ordinarily, travel expenses of dependents for purposes other than with the intent to change the dependent's residence as authorized may not be considered an obligation of the Government (par. M7000-13, 1 JTR). However, in Colonel Ward's case since the transoceanic travel to Iran is not considered an obligation of the Government, we will not object to the payment by the Government of his dependent's travel from Buenos Aires, Argentina, to Miami, Florida (transportation request) and then to the nearest port of embarkation for overseas travel to Iran which in accordance with paragraph M4159-9(c)(1) would be Charleston Air Force Base, South Carolina.

A settlement will be issued in accordance with this decision.


Deputy Comptroller General
of the United States