

DECISION

17875 *McKee*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200641

DATE: April 21, 1981

MATTER OF: Staff Sergeant Bobby L. Jones, USAF

DIGEST: [Claim for reimbursement ~~for~~ dependents' travel expenses] from outside the United States to a point within the United States incurred as a result of an emergency of a personal nature must be denied since the regulations at the time the expenses were incurred required advance approval of the travel which was not obtained and although regulation was amended subsequent to the dependents' travel, it cannot provide a basis for authorizing payment, since regulations may be amended prospectively only, except to correct obvious error.

May a member be reimbursed for the cost of commercial transportation for travel by his dependents from a point outside the United States to a point within the United States in connection with illness of the member's relatives living in the United States? The answer is no since at the time the travel was performed the pertinent regulations precluded reimbursement.

Staff Sergeant Bobby L. Jones [has appealed the settlement of our Claims Division which denied his claim for reimbursement of his dependents' travel expenses.] He has been paid \$12.50 by the Air Force in partial settlement of his claim. He now seeks the remainder, \$833.70.

On June 28, 1979, Sergeant Jones, [while stationed in Japan, received a message through the local Red Cross Chapter from his mother-in-law's doctor, who requested that his wife return to the United States to be with her mother who was seriously ill with cancer. Shortly thereafter, Sergeant Jones received authorization for his wife and son to leave for the United States on a Government aircraft on a "space-available basis."] See Department of Defense Directive (Air Transportation Eligibility) 4515.13-R, para. 4-5(3). [Sergeant Jones learned, however, that seats for his wife and son would not be available on the Government aircraft for several days at the earliest. Believing time to be of the

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essence, he purchased tickets, at personal expense, for seats on a commercial airline and his wife and son departed for the United States on June 30, 1979.

[Earlier, Sergeant Jones had requested a humanitarian reassignment to the United States so that he and his family could be with his mother and mother-in-law, both of whom were seriously ill.] The request was granted on July 9, 1979. Since Sergeant Jones did not expect his request for reassignment to be granted so quickly, he had previously decided, upon the earlier authorization of his dependents' travel, that they would return to Japan at a later date.] The travel authorization indicated that the dependents' stay was to last approximately 45 days. [Once reassigned in the United States, of course, Sergeant Jones had no need for his dependents to return to Japan.]

[Sergeant Jones seeks reimbursement of his dependents' travel expenses pursuant to paragraph M7103-2-7, Volume I, Joint Travel Regulations (1 JTR), the regulation in effect at the time of the travel.] This regulation, which implements 37 U.S.C. § 406(h), allows members' dependents in certain circumstances to return from overseas at Government expense, although the member's permanent station remains unchanged. [Under the regulation, dependents could return for compelling personal reasons, including the serious illness of close relatives, if it is determined that it is in the best interest of the member or the member's dependents and the Government. This regulation requires that such a determination be made by the Secretary concerned or his designee prior to the travel.]

Paragraph M7103-1 of 1 JTR, in effect at the time, provided that [reimbursement could not be authorized unless orders were issued authorizing travel under this regulation. Further, we have consistently held that without the necessary authorization before the travel commences, no reimbursement could be allowed for the travel of dependents of military personnel.] B-170734, October 16, 1970, and B-167331, August 6, 1969.


As is the case here, dependents sometimes travel on personal emergency situations where only a short

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visit is contemplated. However, after returning from overseas the situation develops to where, had all the facts been known, travel would have been requested under 1 JTR, paragraph M7103. As a result we recommended that consideration be given to amending the regulation, describing a case the circumstances of which closely paralleled those of the case before us. B-195708, October 17, 1979. An amendment was approved to paragraph M7103. See Change 324 to the JTRs (February 1, 1980), and Change 327 (May 1, 1980). These amendments were effective November 7, 1979. Generally, this amendment authorizes the advance return of dependents from overseas in circumstances such as in the instant case and provides for authorization to be given after the travel has been performed.

However, we must deny Sergeant Jones' claim for reimbursement since [at the time his dependents traveled to the United States, no exception had been made to the rule requiring advance approval in order to be reimbursed for the travel.] It is a well-settled principle that once administrative regulations are properly issued, rights thereunder become fixed and although they may be amended prospectively to increase or decrease rights given thereby, they may not be amended retroactively except to correct obvious errors. 56 Comp. Gen. 1015, 1016 (1971) and cases cited therein.

[Since Sergeant Jones' dependents traveled to the United States in June of 1979 prior to amendment of the regulations, we have no choice but to deny Sergeant Jones' claim and sustain the settlement by our Claims Division.]


Acting Comptroller General
of the United States