Eastwood 24705

DECISION

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

FILE: B-209591 **DATE:** April 1, 1983

MATTER OF: Lieutenant Christopher J. Donovan, USAF

DIGEST: Transferred member of the Air Force may be reimbursed the cost of transporting the houseboat he uses as his dwelling under 37 U.S.C. § 409, which permits the transportation at Government expense of a mobile home dwelling, because it is determined that a boat may qualify as a "mobile home dwelling" under the law. 48 Comp. Gen. 147 (1968) is overruled and regulations issued to implement that decision need not be applied so as to exclude payment for transporting boats which are used as residences.

The question in this case is whether Lieutenant Christopher J. Donovan, USAF, may be reimbursed the cost of transporting the houseboat he has used as his dwelling and intends to continue to use as his dwelling after his transfer. Because we determine in this decision that a boat may qualify as a "mobile home dwelling" within the meaning of 37 U.S.C. § 409 (Supp. IV, 1980) the claim for transportation costs is for allowance.

The accounting and finance officer at Headquarters, 354th Tactical Fighter Wing (TAC), Myrtle Beach Air Force Base, South Carolina, presented the question, which was assigned control number 82-26 by the Per Diem, Travel and Transportation Allowance Committee.

In August 1982 Lieutenant Donovan received orders transferring him from Myrtle Beach, South Carolina, to Washington, D.C., effective in November. He requested that his houseboat be moved at Government expense under 37 U.S.C. § 409. Since a prior decision of the Comptroller General (48 Comp. Gen. 147 (1968)) held that a houseboat did not qualify as a "mobile dwelling" under section 409, the accounting and finance officer transmitted his request here for an advance decision.

Lieutenant Donovan argues that his houseboat fits within the definition of a "mobile home" in Volume 1 of the Joint Travel Regulations and that he, therefore, is entitled to transportation expenses in accordance with

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chapter 10 of those regulations. He states that it can be moved overland, noting that there are a number of companies that routinely move large houseboats in the same manner that large house trailers are moved and at approximately the same cost. He also states that houseboat living in a marina has become a common and viable form of homeownership which does not differ significantly from living in a trailer park. The accounting and finance officer suggests that there may have been developments or changes since the Comptroller General's 1968 decision that would warrant reconsideration of that holding.

At the time of the Comptroller General's decision at 48 Comp. Gen. 147 (1968), 37 U.S.C. § 409 authorized a transferred member to transport a "house trailer" or "mobile dwelling" within the United States for use as a residence in lieu of transportation of baggage and household effects or payment of dislocation allowance. Payment for the transportation of a "mobile dwelling" was limited by a statutory maximum mileage rate. The decision noted that Congress had increased the statutory maximum mileage rate over the years in order to reflect the rate increases published in tariffs filed with the Interstate Comerce Commission (ICC) by motor carriers for movement of "house trailers." The decision also stated that the ICC rates upon which the statutory maximum rate was based did not apply to boats, including houseboats, and concluded that since reimbursement was on a mileage basis, the statute "contemplates overland travel." In that decision we held that the term "mobile dwelling" referred to those "* * * designed to be moved overland, either by being self-propelled or towed * * *" and, therefore, did not include a boat or houseboat.

However, we believe that 48 Comp. Gen. 147 may be unduly restrictive. Four years after that decision the Comptroller General held that a privately owned Pullman rail car converted for use as a residence would qualify as a mobile dwelling for the purpose of section 409 since there was nothing in section 409 or the legislative history of the statutes from which it was derived to indicate any intent that the section was not to be applicable to a mobile dwelling transported by rail. 51 Comp. Gen. 806, 809 (1972). We did not consider it critical that the ICC rates used to establish the mileage rates under

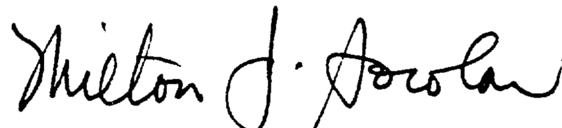
section 409 did not apply to Pullman cars or that Congress never specifically considered rail cars as mobile dwellings in its deliberations.

In 1980 Congress amended section 409 to provide for transportation of a "mobile home dwelling" and to limit reimbursement for transportation on the basis of the cost of baggage and household goods transportation, rather than on a mileage basis. Pub. L. No. 96-342, 94 Stat. 1096. Given these changes, we are of the view that the term "mobile home dwelling" as used in section 409 includes a boat.

Regarding the definition of "mobile home" in Appendix J to Volume 1 of the Joint Travel Regulations, we recognize that the phrase "designed to be moved overland" was included to implement the decision in 48 Comp. Gen. 147 which is overruled by this decision. Although that phrase would appear to exclude movement of boats, which are designed to be moved in the water, we do not find that the regulation need be so restrictively interpreted in these circumstances. The law has been changed and our view of the transportation of boats thereunder has changed. No useful purpose would be served by an interpretation of the regulations which would prevent implemention of the newly authorized benefit. We suggest, however, that the definition of "mobile home" be clarified to reflect more specifically this interpretation. As to the Federal Travel Regulations (FPMR 101-7) see our decision B-207665 of today.

This decision represents a substantial departure from our previous interpretation of the Joint Travel Regulations. Given the reliance placed upon our prior interpretation and the extent to which retrospectivity would be disruptive of settled claims, the rule set forth above will be prospective only. Claims settled prior to the date of this decision should not be reopened. See Matter of Lay, 56 Comp. Gen. 561 (1977).

Accordingly, Lieutenant Donovan's claim may be allowed if otherwise proper.



Acting Comptroller General
of the United States