The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Court-Martialed Service Members--Transportation of Dependents and Household Effects
File: B-222947

Date: December 10, 1986

DIGEST

The Joint Travel Regulations may not be amended to authorize the transportation of dependents and household effects of a service member stationed in the continental United States who is confined under a court-martial order since there is no statutory authority for this.

DECISION

The Chairman of the Per Diem, Travel and Transportation Allowance Committee requests our decision on the question of whether the Joint Travel Regulations (JTR) may be amended to authorize the transportation of dependents and the shipment of household goods of service members stationed in the continental United States who are court-martialed and sentenced to confinement. We conclude that the JTR may not be so amended since currently there is no statutory authority for it.

BACKGROUND

At the present time, when a service member who is stationed in the continental United States is court-martialed and then ordered to confinement either at the station where tried or at another location, the JTR does not provide for the member's dependents and household effects to be moved at Government expense. The Chairman of the Per Diem, Travel and Transportation Allowance Committee suggests that this may create problems for dependents without funds who wish to move to a place near their relatives or friends. Hence, the Chairman asks:

> "* * * may the JTR Volume 1 be amended to authorize transportation of dependents and shipment of household goods for a member ordered to confinement:

"a. at the same station, or

"b. at another station,

on an 'as for a permanent change of station' basis regardless of whether or not the member is to be discharged on the completion of confinement?"

OPINION

We have held that a service member stationed in the continental United States who is court-martialed and ordered to serve a period of confinement has no entitlement to the transportation of his dependents and household effects at Government expense. See B-164367, June 21, 1968. As explained in that decision, a transfer to a facility for a period of confinement cannot be considered a move to a new permanent duty station, and as a general rule under the governing provisions of statutory law a service member cannot receive these transportation entitlements unless ordered to make a permanent change-of-station move. See 37 U.S.C. § 406(a) and (b).

The Chairman recognizes that we have held that confinement under a court-martial order does not constitute a permanent change-of-station transfer. He points out, however, that a member's transfer to a hospital is likewise not a permanent change of station and yet the member's dependents and household effects are moved at Government expense. He notes that the JTR authorizes the transportation of dependents and household goods of a service member who is hospitalized for prolonged treatment in the same manner "as for a permanent change of station," and that we have not objected to that provision of the regulations. See 48 Comp. Gen. 603 (1969). Consequently, he questions whether it would be permissible to adopt a similar provision in the JTR to authorize the transportation of the dependents and household goods of service members in confinement.

In 48 Comp. Gen. 603, supra, we analyzed the nature of a service member's duty station and concluded that it was the place where his or her basic duty assignment is performed. We expressed the view that a transfer to a hospital solely for observation and treatment did not constitute a change of permanent duty station since the member would not be performing duty there. Nevertheless, we declined to rule that the hospitalized service member could not receive transportation entitlements. In so doing we noted that while the validity of the regulation authorizing these entitlements was not entirely free from doubt, the administrative practice of

granting these transportation entitlements to a hospitalized service member who received a certificate of prolonged treatment had been in effect since 1947 and had thus been part of the JTR, and its predecessor regulations, for many years without congressional objection. Therefore, we acquiesced in the continuation of this administrative practice.

We do not consider our decision in 48 Comp. Gen. 603 as a basis to authorize the transportation of the dependents and household effects of a court-martialed service member. In our view the two situations, that is, a member transferred to a hospital for prolonged treatment and a member transferred to a facility for confinement, are not analogous. Furthermore, we have no basis to conclude that congressional acquiescence or approval has ever been given to any proposal to authorize the transportation of the dependents and household goods of a service member stationed in the continental United States because of the member's confinement.

While such transportation entitlements have been found to exist for members stationed outside the United States, that was based on additional legislation which does not apply to members stationed within the continental United States. Specifically, Public Law 88-431, August 14, 1964, 78 Stat. 439, added subsection (h) to 37 U.S.C. § 406 to provide, among other things, that the service concerned could authorize the transportation of dependents and household effects for service members stationed outside the continental United States when orders directing a change of permanent station had not been issued or could not be used as authority for the transportation. We pointed out that one of the purposes of this law was to allow for transportation of dependents and household goods to the United States from overseas areas in situations involving the confinement of the member. 44 Comp. Gen. 724, 726 (1965). The legislation was designed in part to prevent the families of those service members from being stranded overseas without the means of returning to the United States. See 63 Comp. Gen. 135, 139-140 (1983). Hence, on the basis of the amendment to 37 U.S.C. § 406 adding subsection (h), we held that regulations could be issued authorizing the transportation of dependents and household effects of a member stationed overseas who is returned to the United States for incarceration, upon a determination by the Secretary concerned that it is in the best interests of the dependents and the United States. Significantly, however, this provision expressly applies only to service members stationed outside the continental United States.

Thus, as the above discussion illustrates, a service member who is court-martialed and ordered to confinement is not considered to have made a permanent change-of-station transfer. Until the passage of the statute codified at 37 U.S.C. § 406(h), the transportation of dependents and household effects of a member confined incident to a court-martial, whether he was stationed within or without the continental United States, was not borne by the Government. While 37 U.S.C. § 406(h) does now provide authority for a regulation under which the transportation of the dependents and household effects of a court-martialed service member stationed outside the continental United States can be accomplished at Government expense, the statute does not apply to a member stationed within the United States. Accordingly, unless and until there is some statutory enactment to provide authority for it, the proposed regulation may not be promulgated. Cf. B-131632, November 30, 1977. Rather, we affirm our decision in B-164367, June 21, 1968, that there is no statutory basis for paying the transportation of the dependents and household effects of a court-martialed member stationed in the continental United States who is ordered to confinement.

for Milton J. Socolar
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of the United States