



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Major Pablo Rodriguez, USA

File: B-224780

Date: February 24, 1987

DIGEST

In 1983 an Army officer stationed in Pennsylvania, whose permanent home of record is Puerto Rico, was authorized emergency leave for the purpose of returning to Puerto Rico to attend a funeral. Due to time constraints he was unable to use cost-free government air transportation, and instead he paid for commercial airline tickets to provide transportation for himself and the members of his immediate family to Puerto Rico. Since the applicable statutes in effect in 1983 did not provide authority for reimbursement of travel expenses incurred by personnel of the uniformed services in such circumstances, his claim for reimbursement of the cost of the airline tickets may not be paid. In addition, the subsequent amendment of the applicable statutes in 1984 to provide authority for reimbursement of transportation expenses incurred in such circumstances does not provide a basis for allowing payment on the officer's claim, since the legislation cannot be applied retroactively.

DECISION

This action is in response to a request for reconsideration by Major Pablo Rodriguez of our Claims Group's October 17, 1983 disallowance of his claim for travel expenses. We affirm the disallowance of the claim.

BACKGROUND

In 1983 Major Pablo Rodriguez (then Captain Rodriguez), a member of the U.S. Army, was stationed at Tobyhanna Army Depot, Tobyhanna, Pennsylvania. On February 22, 1983, he was notified of the death of his mother-in-law in Puerto Rico (his home of record). He applied for and was authorized emergency leave. He and his family returned to Puerto Rico.

The emergency leave orders authorized space-available, cost-free government air travel for Major Rodriguez and

his dependents from Norfolk, Virginia, to Puerto Rico. Major Rodriguez indicates, however, that the only scheduled flights from Norfolk to Puerto Rico were on Saturdays, 4 days from the day he needed to travel. Due to the distance and the nature of the emergency, he purchased commercial air transportation from New York to Puerto Rico. Upon his return, he submitted a claim for reimbursement of his travel expenses. The claim was denied by the Army because the statutes then in effect authorizing reimbursement for air transportation for emergency leave travel applied only to members stationed outside the United States.

The matter was then submitted to our Claims Group. The claim was denied since in 1983 the authority for reimbursement of travel expenses for service members on emergency leave was limited in the applicable statutes and regulations, to those members assigned to a duty station outside the United States. Thus, there was no authority for reimbursement of his expenses. Major Rodriguez has recently requested reconsideration of the matter.

ANALYSIS AND CONCLUSION

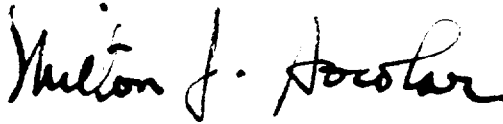
Section 411d of title 37, United States Code, as in effect in 1983, authorized reimbursement of commercial transportation expenses incurred by service members on emergency leave only when they were stationed outside of the continental United States and government transportation was not reasonably available. In Public Law 98-525, October 19, 1984, 98 Stat. 2492, Congress amended 37 U.S.C. § 411d to authorize reimbursement of emergency leave transportation expenses to service members domiciled overseas who were assigned to duty stations within the United States. The legislative history of the amendment contains this explanation concerning its purpose:

"Section 411d of title 37, United States Code, authorizes government-funded emergency leave travel from an overseas duty station to the continental United States, Alaska, Hawaii, the Commonwealth of Puerto Rico and the possessions of the United States for members of the uniformed services and their dependents. The law does not authorize, however, members and dependents stationed in the continental United States to travel to overseas locations. This could create a significant financial burden on members of the armed forces from the possessions of the United States, such as Guam, who must return home because of family crises.

"The committee recommends expansion of the present emergency leave authority to include transportation for military members and their dependents from the continental United States to overseas areas. In all cases, this transportation would be authorized only if government transportation were not reasonably available." H.R. Rep. No. 691, 98th Cong., 1st Sess. 261, reprinted in 1984 U.S. Code Cong. & Ad. News 4174, 4218.

Thus, effective October 19, 1984, statutory authorization for government-funded emergency leave travel was extended to service members stationed in the continental United States whose permanent home or domicile is overseas. This legislation cannot be given retroactive effect, however, and it provides no authority for government-funded emergency leave travel to service members who, like Major Rodriguez, performed such travel to overseas locations prior to October 19, 1984. Compare 31 Comp. Gen. 305 (1952).

Accordingly, we sustain the denial of Major Rodriguez' claim for reimbursement of the expenses of the emergency leave travel he and the members of his family performed in 1983.

for 
Comptroller General
of the United States