

DECISION



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

[Claim for Travel Expenses of Dependent Wife by Retired Military Member]

FILE: B-195604

DATE: September 28, 1979

MATTER OF: Technical Sergeant Michael J. Mahoney, USAF
(Retired)

- DIGEST:
1. There is no authority for a dependent to travel at Government expense to a service member's last duty station under his permanent change-of-station orders, where the sole purpose of the member's transfer is retirement processing and he has no intention of establishing a permanent home at or near the last duty station, since a member is not entitled to have his dependents accompany him at Government expense on a temporary assignment for personal convenience to a place where they do not intend to establish a permanent home.
 2. A service member was transferred from Greece to McGuire AFB, N.J., for retirement processing, and he selected Taiwan as his home of selection upon retirement. He is entitled to his travel at Government expense from Greece to McGuire and then to Taiwan. However, he is not entitled to his wife's travel from Taiwan to the United States and return to Taiwan because she was residing in Taiwan when his retirement orders were issued.

The issues presented in this case are whether Yonkers, New York, was Sergeant Mahoney's home of selection upon retirement and whether his dependent wife was entitled to travel from Taiwan, Republic of China (R.O.C.) to Yonkers, New York, and return at Government expense in the circumstances described. The answer to both questions is no.

The issues arise upon an appeal from a settlement of our Claims Division dated June 12, 1979.

Technical Sergeant Michael J. Mahoney, USAF, while stationed at the United States Air Force Hospital in Iraklion, Greece, received notification by special orders dated January 18, 1977, that he would be retired effective August 1, 1977. He was serving an unaccompanied tour in a restricted area. The designated location

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B-195604

of his dependent wife at that time was Taiwan, R.O.C. By orders dated June 3, 1977, Sergeant Mahoney was ordered to McGuire Air Force Base, New Jersey, for retirement processing to report no later than 7 duty days prior to the effective date of terminal leave with retirement effective August 1, 1977. Those orders authorized space available travel for "locally acquired" dependents to CONUS if sponsor accompanies dependent on member's projected departure date. The dependent wife traveled by commercial airline (American charter) from Taiwan to McGuire AFB on July 20, 1977. By special orders dated July 21, 1977, Sergeant Mahoney was authorized to proceed with his dependent wife from McGuire AFB to Taiwan for the purpose of establishing permanent residence upon retirement with travel to be completed by August 1, 1978. Those orders also authorized transportation of baggage, household goods and a privately owned vehicle. Upon his retirement Sergeant Mahoney and his wife resided in Yonkers, New York, until October 1977 when they departed for Taiwan completing travel on or about October 14, 1977.

The claim for Mrs. Mahoney's travel was denied by the Air Force upon the basis that she was residing at the home of selection at the time the retirement orders were issued and thus no travel allowance was authorized for her travel to Yonkers, New York, and return to Taiwan.

The settlement of our Claims Division of June 12, 1979, determined that Yonkers, New York, was Sergeant Mahoney's home of selection and that any allowance paid for his travel to Taiwan would have been erroneous and should be collected, if previously paid. As to travel entitlements for Sergeant Mahoney's wife, it was determined that she was entitled to travel at Government expense from Taiwan to Yonkers but that there was no authority for reimbursing Sergeant Mahoney for the cost of her return travel from Yonkers to Taiwan.

Upon review it is now our view that the record does not substantiate a finding that Yonkers, New York, was Sergeant Mahoney's home of selection upon retirement. It is true that he asserts in the letter of April 6, 1979, that upon his retirement he and his wife established residence in Yonkers, New York, while he was seeking employment. However, they only remained there a relatively short time before going to Taiwan, which Sergeant Mahoney asserts is his home of selection.

B-195604

Under applicable law and regulations Sergeant Mahoney had 1 year from the date of retirement to make a home of selection, 37 U.S.C. 404(c) (1976), and the same length of time for transportation of household goods and dependents to the home of selection, 37 U.S.C. 406(g) (1976).

The record indicates that Sergeant Mahoney's wife was in Taiwan at the time he received his retirement orders. Further, she traveled to New York on July 20, 1977. Orders dated 1 day later, July 21, 1977, indicated that Sergeant Mahoney had designated Taiwan as his home of selection. The proximity of the dates of her arrival in the United States and the order showing the home of selection are such that a reasonable assumption can be made that a determination had been made that Taiwan was to be the home of selection before Sergeant Mahoney's wife left Taiwan for her trip to the United States. The fact that Sergeant Mahoney and his wife resided in Yonkers for several months before returning to Taiwan does not change the fact that Taiwan was the home of selection.

Implementing regulations set forth in paragraph M7010, Volume 1, Joint Travel Regulations (1 JTR), provide that a member on active duty will be entitled to transportation of dependents (transportation in kind, including transportation requests, or the monetary allowance in lieu of transportation at the rates prescribed) "from his last permanent duty station, or the place to which they were last transported at Government expense," to the home selected by him when he is retired with pay.

Under 37 U.S.C. 406(a) and (b) a member of a uniformed service who is ordered to make a change of permanent station is entitled to transportation in kind for his dependents, subject to such conditions and limitations, and to and from such places, prescribed by the Secretaries concerned. Implementing regulatory provisions of paragraph M7000, 1 JTR, provides in pertinent part as follows:

"Members of the Uniformed Services are entitled to transportation of dependents at Government expense upon a permanent change of station * * * except:

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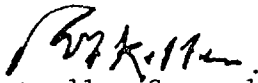
B-195604

"13. for any travel of dependents between points otherwise authorized in this volume to a place at which they do not intend to establish a residence; travel expense of dependents for pleasure trips or for purposes other than with intent to change the dependents' residence as authorized by this volume may not be considered an obligation of the Government;"

We have consistently held that under the applicable provisions of law and regulation there is ordinarily no authority for a dependent to travel at Government expense under permanent change of station (PCS) orders to a member's last duty station where the purpose for his assignment is for separation processing, since such assignment is in fact temporary in nature. If a member's permanent home of selection upon retirement is at the same location as his point of separation, his dependent may travel to that location for that purpose only under the member's PCS orders, and in those limited circumstances the member may be reimbursed for such travel. However, if the dependent accompanies the member to his separation point, and their stay at that place does not exceed the span of an ordinary visit, vacation, or temporary duty assignment, and other facts in the case indicate that travel was for purposes other than to establish a permanent home, the conclusion is required that the travel was not to a bona fide residence. In that case there is no entitlement to dependent travel at Government expense. See 53 Comp. Gen. 44 (1973); B-180394, December 24, 1974; B-180666, July 18, 1975; B-188462, July 11, 1977; B-150187, August 26, 1977; and B-192949, June 6, 1979.

In these circumstances Sergeant Mahoney was entitled to his personal travel from Greece to McGuire AFB, and then to his home of selection, Taiwan, at Government expense. Since his wife was residing in Taiwan at the time his retirement orders were issued, there is no authority for payment of her travel from Taiwan to the United States and return.

Accordingly, Sergeant Mahoney's claim for his wife's travel may not be allowed, and settlement for his travel should be made on the above basis.


Deputy Comptroller General
of the United States