

DECISION

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

DEC 6 1977

B-188942

FILE:

DATE:

MATTER OF:

Master Sergeant John W. P. Gallagher,
USAF, Retired

DIGEST:

1. An Air Force member received travel allowances for his dependents' travel to Waterford, New York, which he certified as his home of selection incident to his retirement. Subsequently, he traveled to Isfahan, Iran, for which he claims travel allowances as travel to his home of selection. Since Isfahan appears to be his actual home of selection he is entitled to mileage allowance to the appropriate United States port of embarkation, not to exceed the mileage he actually traveled, less the amount he received for his dependents' travel to Waterford. However, he is not entitled to reimbursement for air fare to Iran because such travel was not arranged by a transportation officer; it was on a foreign carrier; and it appears that it was not at his personal expense.
2. Entitlement to travel expenses to a home of selection upon retirement is a right which accrues to the member only, and no right accrues separately for his dependents' travel to a separate home of selection.

This action is in response to correspondence from Master Sergeant John W. P. Gallagher, USAF, Retired, SSAN [REDACTED], wherein he appeals our Claims Division settlement dated April 16, 1976, which disallowed his claim for reimbursement for travel to his home of selection (Isfahan, Iran), incident to his retirement from the United States Air Force on November 1, 1974.

The record shows that by order dated September 12, 1974, the member was retired from active duty in the Air Force effective November 1, 1974, at Homestead Air Force Base, Florida, his last permanent duty station.

Incident to his retirement, Sergeant Gallagher submitted a travel voucher (DD Form 1351-4) for his dependents' travel by private automobile performed during October 18 to 26, 1974, from 4505 A Olympia, Homestead Air Force Base, Florida, to 12 Dover Place, Waterford, New York. This voucher showed that the mileage allowance claimed was for dependents' travel from last permanent station to home of selection to establish a bona fide residence. The voucher, signed and submitted by Sergeant Gallagher on November 1, 1974, was paid on the basis of his certification in the amount of \$362.11 on November 1, 1974, by the Disbursing Officer at Homestead Air Force Base.

Thereafter, in February 1976 the member submitted a voucher (DD Form 1351-2) as a claim to the Air Force for his "retirement travel pay" listing Isfahan, Iran, as his home of selection incident to retirement. The Air Force Accounting and Finance Center forwarded the claim to our Claims Division as a doubtful claim, on the basis that payment for the dependents' travel to Waterford, New York, as home of selection incident to the member's retirement, had already been made.

By settlement dated April 16, 1976, our Claims Division disallowed the member's claim for travel allowance for travel performed during the period December 9 to 21, 1974, to Isfahan, Iran, as his home of selection. Such disallowance was premised on the basis that travel allowances had been paid for his dependents' travel to Waterford, New York, as the member's home of selection, and that such selection was irrevocable under paragraph M4158-2a of the Joint Travel Regulations.

In his request for reconsideration, the member asserts that he submitted the original travel voucher listing Waterford, New York, as home of selection based on bad advice from the consolidated base personnel office (CBPO) because his wife had just had major surgery and could not be involved in moving. He contends that, in any event, he personally had not selected a home until he filed for his travel to Isfahan, Iran, as his home of selection incident to retirement, and that he has not been reimbursed for such travel. The member generally cites Air Force Pamphlet (AFP) 211-1-12 in support of his claim, and stresses that Isfahan, Iran, was the only home of selection chosen by him incident to his retirement.

Sections 404(c) and 406(g) of title 37, United States Code (1970), provide that under regulations prescribed by the Secretaries concerned, a member who is retired in the circumstances described may select a home for the purposes of travel and transportation entitlements if the selection is made within 1 year of retirement. He is then authorized travel and transportation for himself, his dependents and household effects to the home selected.

Paragraph M4158 of Volume I, Joint Travel Regulations (1 JTR), in effect at the time here involved and implementing section 404(c) of title 37, United States Code, provides in subparagraphs 1a and 2a that a member on active duty who is retired may select his home and be entitled to travel and transportation allowances thereto from his last duty station within 1 year after termination of active duty. Paragraph M7010-1a, 1 JTR, contains the provisions authorizing the travel of dependents to the home selected by the member in accordance with paragraph M4158. In this respect, Appendix J, 1 JTR, defines "home of selection" as used in these regulations to mean the place selected by the member as his home upon retirement.

The purpose of the before-mentioned statutes and regulations is to authorize travel at Government expense for a member and his dependents and transportation of household goods to the place where he goes to reside following retirement. Unless that place has been selected and travel to it for that purpose has been performed, no right to travel and transportation allowances accrues. See 36 Comp. Gen. 774 (1957). In this connection, it is to be noted that the entitlement to receive travel and transportation expenses upon retirement is a right which accrues to the member only; no right accrues to his dependents directly. Payment for dependent travel and transportation of household goods must be based on the member's entitlements. Therefore, where a home has been selected and the dependents travel to that location, but the member travels to another location and remains there, payment of travel and transportation allowances of the member and his dependents to the selected location is not authorized. See B-183344, May 18, 1976; 52 Comp. Gen. 242 (1972); and generally 54 Comp. Gen. 1042 (1975).

The member claims reimbursement for his travel to his home of selection on the basis of his stated itinerary of Homestead, Florida, to Dallas, Texas, by private automobile; then by commercial plane to

New York, New York; Paris, France; Tehran, Iran; and Isfahan, Iran, as his stated home of selection. Reimbursement is claimed in amounts of \$799.34 and \$23.73 for the air travel, and also \$5.50 for miscellaneous baggage charges in connection therewith. Among the documents submitted here in support of the member's claim are copies of airline tickets issued by Air France and Iran National Airlines covering the member's travel from Dallas, Texas, to Isfahan, Iran.

It is not clear from the member's itinerary why he traveled from Homestead, Florida, to Dallas, Texas, in order to travel overseas to Iran. Nor is there any indication of when and how his dependents traveled to Isfahan, Iran, and the expenses he incurred for such travel.

In any event, the member is quite correct in his assertion that Waterford, New York, was not his home of selection for travel allowances, since he did not travel there incident to his retirement. But, by the same token, he did certify that the travel of his dependents to Waterford was for the purpose of establishing a bona fide residence at that home of selection, and he received payment for their travel on such basis. As was stated previously, the right to travel expenses upon retirement is a right which accrues to the member only; no right accrues to his dependents and payment for dependent travel must be based on the member's entitlements.

In line with the member's assertion of his own "home of selection" travel to Isfahan, Iran, paragraph M4159, 1 JTR, provides that a member traveling under permanent change of station orders (including separation from the service or relief from active duty) to, from, or between points outside the United States which orders did not specify group travel or direct travel by a specific mode of transportation will be entitled to:

- "2. transportation by Government aircraft or vessel, if available, otherwise Government procured transportation or reimbursement for transportation procured at personal expense for the transoceanic travel involved (see subpar. 4) * * *"

Subparagraph 4b of M4159, 1 JTR, in effect at the time of the travel to Iran, provided for reimbursement for the cost of transoceanic travel performed at personal expense when Government transportation was not available.

AFP 211-1-12, cited by the member, is not a statutory regulation, but implements the controlling Joint Travel Regulations and outlines procedures to be followed by a retired member in securing Government transportation to an overseas home of selection. There is no indication or assertion that the member attempted to secure Government transportation for himself or his dependents to Iran, or that request was made by the member for orders authorizing such overseas travel. Also, there is no showing that Government transportation would not have been available had it been requested. In fact, there is some indication, that the member's travel to Iran was charged to and arranged by Bell Helicopter International incident to the member's employment in Iran.

The member's Air France ticket (fare \$799.34) issued on December 12, 1974, shows that it is endorsed to Bell Helicopter International for travel from Dallas to Tehran. Several recent decisions by our Office involved situations where retired military members, hired shortly after their military retirements by a civilian employer-- Bell Helicopter International, Inc. --had their travel expenses from the United States to Isfahan and Tehran, Iran, either provided or paid for by Bell Helicopter International. 55 Comp. Gen. 761 (1976); B-184507, February 17, 1976; B-182900, February 26, 1976; and B-185732, March 23, 1976. In those decisions it was held, generally, that members, who on retirement, traveled to homes of selection in Iran, and were reimbursed for travel expenses by Bell Helicopter International, were not entitled to reimbursement of travel expenses by the Government, since the travel was not performed at personal expense as required by applicable regulations.

We also note that the portions of the member's travel from New York to Tehran and then on to Isfahan were performed on foreign flag airlines--Air France and Iran National Airlines. Under the provisions of 1 JTR, paragraph M2150 (change 248, October 1, 1973) in effect at the time of the member's travel, the use of aircraft of United States registry was required, unless a determination was made by a transportation officer or other appropriate officer that

such aircraft were not available. No such determination was made in this case. Therefore, reimbursement for the portion of the member's travel on the foreign airlines would not be authorized in any event. See B-179445, September 21, 1973; and B-150187, May 12, 1976.

Since the record before this Office shows that the member did perform travel to Isfahan, Iran, and has continued to reside there, such location may be accepted as his home of selection for the purpose of his personal travel. However, in view of the circumstances discussed above, his travel rights would be limited to a mileage allowance for the distance between Homestead, Florida, and the appropriate east coast port of embarkation for overseas travel to Iran, which the Air Force has indicated is New York in this case, not to exceed the actual distance the member traveled from Homestead to Dallas. 1 JTR, paragraphs M4159-1 and M4150-1, and B-184507, February 17, 1976.

Regarding the amounts paid for travel of the member's dependents, it appears that they have joined him in Iran. His entitlement to reimbursement for their travel may be based upon constructive travel similar to that authorized for the member. That is, not to exceed travel from Homestead, Florida, to New York, the port of embarkation. Payments for allowable travel of the member and his dependents as authorized herein will be subject to setoff of the payments already made for the dependents' travel to Waterford, New York.

Settlement will be issued on the basis of the above in due course.

R. F. KELLER

Deputy

Comptroller General
of the United States