

DECISION



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

FILE: B-190897

DATE: March 14, 1978

MATTER OF: Colonel Harris J. Taylor, USAF

DIGEST: Member of armed services stationed overseas whose dependent son returned to the United States for his second year of college is not entitled to reimbursement for such travel notwithstanding orders issued subsequent to the travel stated that the travel was in accordance with paragraph M7103-2, item 7, 1 JTR, and the Base Commander certified that the delay in publishing the orders was through no fault of the member. Even if orders had been timely issued, there is no legal basis for such travel at Government expense because the law and regulations authorize such travel only if there is a lack of overseas educational facilities which arose after the dependent's arrival at the overseas station, and that was not the case. 47 Comp. Gen. 151 (1967).

This action is in response to a communication from Colonel Harris J. Taylor, USAF, [REDACTED] in effect appealing our Claims Division settlement of April 5, 1976, disallowing his claim for reimbursement for his dependent son's travel from England to San Marcos, Texas, for the purpose of returning to college.

The file shows that while stationed in England, Colonel Taylor, by document dated August 22, 1974, requested, under the provisions of paragraph M7103-2, item 7, and M8303, Volume 1, Joint Travel Regulations (1 JTR), the early return of his dependent son from the member's duty station in England to South West Texas State University, San Marcos, Texas, during the month of August 1974. The early return was not in connection with a permanent change of station of the member. The justification given for the early return was to "attend college." The member indicates that his son was returning to enter his second year of college. This request was approved August 27, 1974, with the statement that shipment of household goods in accordance with paragraph M7103-2, item 7, and M8303, 1 JTR, was not authorized. However, Special Order No. TA-382 which authorized the travel of the member's son to San Marcos, Texas, was not issued until September 19, 1974. A statement from the member's Base Commander certified that Colonel Taylor was advised prior to August 24, 1974, that travel orders

for his dependent's early return to continental United States would be published, that due to an administrative delay at headquarters the orders were not published until after the travel had already been performed, and that the delay was through no fault of the member.

The member's son travelled on August 24, 1974, by commercial aircraft to Texas and thereafter the member submitted a claim for reimbursement for the cost of the travel which was denied by our Claims Division's settlement of April 5, 1975. It appears that Colonel Taylor returned to the United States in July 1975, 11 months after the travel of his son.

In his appeal Colonel Taylor contends that there is an inherent moral obligation and responsibility on the Government, when concurrent travel of dependents to an overseas station is authorized, to transport dependents to the overseas location and then to return them to the United States. He further states that the fact that his son returned home in advance of him and his other dependents should not relieve the Government of this responsibility.

The transportation of member's dependents at Government expense must be in accordance with applicable laws and regulations issued pursuant to law. Under the pertinent law, 37 U.S.C. 406 (1970), a member of the uniformed services who is ordered to make a permanent change of station is entitled to transportation of his dependents. However, it is the general rule that all travel under transfer orders must be performed after the issuance of the orders. Subsection 406(h) provides that in the case of a member who is serving at a station outside the United States, if the Secretary concerned determines it to be in the best interests of the member or his dependents and the United States, he may, when orders directing a change of permanent station for the member concerned have not been issued, or when they have been issued but cannot be used as authority for transportation of his dependents, authorize the movement of the member's dependents, baggage, and household effects at that station to an appropriate location in the United States.

Implementing regulations for such dependent travel are contained in chapter 7, 1 JTR. Paragraph M7103-1 (change 259, effective July 2, 1974), of that chapter provided that a member who is permanently stationed outside the United States may request, and the member's commanding officer may authorize, transportation of dependents to

a designated place in the United States, notwithstanding the fact that his permanent station remains unchanged. The authority authorizing such transportation will determine the designated place to which transportation of dependents is authorized and will ensure that a reasonable relationship exists between the condition and circumstances in each case and the destination to which transportation is authorized. When dependents have performed travel without orders to an appropriate destination under circumstances which would have permitted their travel to have been authorized under the provisions of this paragraph, no reimbursement for such travel is authorized even though orders are subsequently issued under the provisions of paragraph M8303-3.

With regard to the above statement concerning travel even though orders are subsequently issued under paragraph M8303-3^X 1 JTR, that paragraph relates to the shipment of household effects and since the approval of the travel involved here expressly provided that shipment of household goods was not authorized, that portion of the regulation is not for application in this matter.

Without regard to the question of the issuance of orders, however, the types of cases in which transportation of dependents may be approved under 37 U.S.C. 406(h) are limited to those meeting the conditions set forth in paragraph M7103-2. The only two types of cases which appear to have any applicability to this case are:

"5. lack of adequate educational facilities or housing for dependents when supported by a statement of the approving authority that the inadequacy of such educational facilities or housing was caused by conditions beyond the control of the member and arose after commencement of travel of dependents to the member's overseas stations;

* * * * *

"7. when determined that the best interests of the member or his dependents and the Government will be served by the return

of one or more of his dependents for compelling personal reasons, such as marital difficulties, financial difficulties, unforeseen family problems, death or serious illness of close relatives, or for reasons of a humanitarian or compassionate nature, and in other situations which have an adverse effect on the member's performance of duty, such determination to be in the form of a statement of the approving authority;"

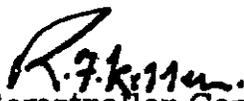
Condition 5 of paragraph M7103-2 has application to the travel of a dependent to the continental United States when adequate educational facilities are not available at the overseas location and the conditions causing the lack of educational facilities "arose after commencement of travel of dependents to the member's overseas station." In the present case, it does not appear that the member's son was travelling because of lack of educational facilities at the overseas location which arose after his initial travel overseas. On the contrary, the son had already attended college in Texas for 1 year and was returning to commence his second year of schooling. While, as the member indicates, the higher educational opportunities available in England for the member's dependents may have been limited, that condition did not arise after his dependents travelled there. In the absence of an official determination that there was a lack of appropriate educational facilities for the member's son and that this situation arose after the member's arrival in England, there was no proper basis for the issuance of orders for the son's advance travel to the United States under paragraph M7103-2, item 5. See 47 Comp. Gen. 151 (1967) and B-156558, June 25, 1965. There was no such determination in this case nor does it appear that any such determination could have been properly made.

With regard to travel under item 7 of paragraph M7103-2, 1 JTR, while the Base Commander made the determination that in accordance with the member's request, the travel was in the best interest of the service member, his dependent and the Government, the facts do not support such a determination. Rather than the compelling personal reasons such as marital difficulties, financial difficulties, unforeseen

family problems, etc., the sole reason here was for the member's son to return to start his second year at college. That is not one of the situations in which this paragraph is applicable. While a contemporaneous authorization or certification by proper authority usually is considered to be the best evidence of the facts, it is not conclusive of the matter where the facts are otherwise clearly established. See 39 Comp. Gen. 561, 563 (1960); and 39 Comp. Gen. 614, 617 (1960). We have held that the regulations do not authorize, and the law is not broad enough to permit, the advance travel of member's dependents for educational purposes when the lack of educational facilities at the overseas station was known when the member was ordered overseas. 47 Comp. Gen. 151. See also B-176384, May 21, 1973, and November 14, 1972; and B-182778, October 30, 1975.

Accordingly, travel of the member's son at Government expense was not authorized under paragraph M7103-2, item 5 or 7, 1 JTR. The disallowance of the claim is, therefore, affirmed.

It is to be noted that under the student travel program permitted under Department of Defense Regulation 4515.13R, paragraph 4-4 (July 14, 1972), a dependent engaged in full-time undergraduate study in the continental United States is permitted Military Airlift Command (MAC) space available transportation from the overseas aerial port of embarkation serving the sponsor's duty station to the continental United States aerial port of debarkation. The student, to obtain this space available travel, must have orders issued by the proper authority authorizing such travel. The record does not indicate how Colonel Taylor's son arrived at the overseas location. However, it would appear that he would have been eligible for the student travel program and could have returned to the United States by that means. Of course he would then have been allowed only MAC space available travel and the travel to and from the aerial ports would have been at the member's expense.


Deputy Comptroller General
of the United States