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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

[Claim by Military Member for Travel Expenses Incident to Retirement] 10,380

FILE: B-192949

DATE: June 6, 1979

MATTER OF: Lieutenant Colonel James Z. Metalios USA,
Retired

- DIGEST:
1. Army member who was transferred from Dhahran, Saudi Arabia, to Fort Dix, New Jersey, under permanent change-of-station orders for purposes of retirement separation processing, and who then traveled on to his home of selection for retirement in Athens, Greece, is entitled to travel allowances for all personal travel performed. However, since his travel from the United States to Greece was at personal expense via commercial airline, and it is not indicated that Government transportation was unavailable, his reimbursement for that travel is limited to the cost for military airlift established by regulation.
 2. There is no authority for a dependent to accompany a service member at Government expense to the 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.
 3. Army member who traveled from his permanent duty station at Dhahran, Saudi Arabia, to Fort Dix, New Jersey for purposes of separation processing and thence to his home of selection on retirement at Athens, Greece, is not entitled to allowances for his dependents' travel from Dhahran to Fort Dix or from Fort Dix to Athens, since

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he was not entitled to the concurrent travel of his dependents on his temporary assignment at Fort Dix. Hence, reimbursement for his dependents' travel to the home of selection is limited to the cost of Government transportation directly from Dhahran to Athens.

Lieutenant Colonel James Z. Metalios, USA, Retired, has requested reconsideration of our Claims Division's June 27, 1978 settlement which disallowed his claim for additional amounts for his personal and dependents' travel incident to his retirement from the Army in January 1977 and instead found him to have been overpaid. In view of the applicable provisions of law and regulations we sustain the Claims Division's settlement.

In December 1976 Colonel Metalios submitted a request for voluntary retirement under the provisions of 10 U.S.C. 3911 (1976), on the basis of his having completed more than 20 years of creditable active military service. At that time he was serving on active duty with the Army Corps of Engineers. His permanent duty station was Dhahran, Saudi Arabia, and he was accompanied at Dhahran by his wife and their 2 children.

Pursuant to this request a special order dated January 7, 1977, was issued announcing Colonel Metalios's placement on the retired list effective January 31, 1977, with Fort Dix, New Jersey, named as the authorized place of retirement. Thereafter, by a special order dated January 9, 1977, issued by Headquarters, Middle East Division, Corps of Engineers, Colonel Metalios was directed to proceed on a permanent change of station (PCS) to Fort Dix for the purpose of separation processing, with a reporting date of January 25, 1977. Concurrent travel of his dependents was purportedly authorized under additional remarks contained in the PCS order.

In accordance with these orders, Colonel Metalios was provided with Government transportation requests (TR's) for his travel and the travel of his 3 dependents via commercial airline from Saudi Arabia to Fort Dix. The cost to the

Government of the TR's was \$474.90 each. He then traveled with his family from Saudi Arabia to Fort Dix, where he completed his separation processing.

Immediately upon his retirement, it appears that Colonel Metalios requested and was issued travel orders by Headquarters, United States Military Academy, West Point, New York, which purported to provide entitlement to further travel at Government expense for himself and his dependents from New York City to his home of selection upon retirement: Athens, Greece. Those orders were dated February 1, 1977. They authorized but did not direct the use of Government transportation.

On February 2, 1977, Colonel Metalios purchased 4 one-way Trans World Airline tickets at a personal cost of \$492 each, for his family's travel from New York City to Athens. It is not indicated that he first attempted to secure Government transportation or that Government transportation was unavailable. The family departed the United States on February 20 and arrived at Athens on February 21, 1977.

In a travel voucher dated February 25, 1977, submitted to Army authorities, Colonel Metalios claimed reimbursement in the amount of \$1,988, representing the cost to him of the 4 airline tickets for travel from New York City to Athens, plus an additional \$20 for ground transportation and baggage handling expenses. Payment was not made on the voucher; instead, the Army Finance and Accounting Center forwarded the matter to the Claims Division of this Office as a doubtful claim.

In its settlement of June 27, 1978, our Claims Division determined that Colonel Metalios had been personally entitled to Government transportation from Saudi Arabia to Fort Dix for the purpose of separation processing, and to further Government transportation from Fort Dix to Athens, his home of selection upon retirement. His entitlement for reimbursement for travel from Fort Dix to Athens was computed to be in the amount of \$239, the cost to the Government of military transportation between those 2 points.

In the settlement, it was further determined that he had not been entitled to have his wife and children transported at Government expense from Saudi Arabia to Fort Dix and thence to Athens. Rather, it was determined that his entitlement to dependent travel was directly from Saudi Arabia to Athens only, at a cost to the Government of \$83 for each dependent, or a total of \$249. Since the Government-provided TR's for the 3 dependents' travel from Saudi Arabia to Fort Dix had cost \$1,424.70, and this exceeded the amounts deemed due Colonel Metalios on account of his personal travel entitlement from Fort Dix to Athens (\$239) together with his entitlement to dependents' travel from Saudi Arabia to Athens (\$249), it was concluded that he was due nothing and was instead indebted to the United States in the amount of \$936.70.

In subsequent correspondence Colonel Metalios has questioned the correctness of that settlement and requested information on how to appeal, which we then furnished him. He subsequently advised us by letter dated December 28, 1978, that he would be out of the country for 90 days and would not be able to act until he returned. We have heard nothing further from him so we are proceeding to review the settlement based on the present record.

A service member's entitlement to military pay and allowances, including travel allowances, is dependent upon a statutory right. The laws and implementing regulations governing travel entitlements upon retirement differ with respect to a service member's personal travel and the travel of his dependents. Hence, Colonel Metalios's entitlement to personal travel to his home of selection upon retirement, and his entitlement to have his dependents transported to that place, will be considered separately here.

I. The Member's Entitlement to Travel at Public Expense to his Place of Separation and thence to his Home of Selection upon Retirement

Subsection 404(a)(1) of title 37, United States Code, provides that under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to

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travel and transportation allowances upon a change of permanent station.

Subsection 404(a)(3) of title 37, United States Code, further provides that under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to travel and transportation allowances upon separation or retirement from his last duty station to his home or the place from which he was called to active duty. Subsection 404(c) provides that a member retired with pay may, not later than 1 year from the date he is so retired, select his home for the purposes of the travel and transportation allowances authorized by subsection 404(a).

Regulations promulgated pursuant to those statutory provisions are contained in Volume 1, Joint Travel Regulations (1 JTR).

Paragraph M4159-1, 1 JTR, generally authorizes the payment of travel and transportation allowances for a member traveling under PCS orders for purposes of separation to a processing station located in the United States from a station outside the United States. In addition, paragraph M4158, 1 JTR, generally authorizes payment of the travel and transportation allowances prescribed in paragraph M4159, for a member's travel from his last duty station to a home of selection upon retirement located outside the United States.

With respect to reimbursement for transoceanic travel, paragraph M4159-4 provides in pertinent part that when Government transportation is available and travel by Government transportation is authorized in the travel orders, but transoceanic travel is performed at personal expense, the member is entitled to reimbursement for the cost of the transportation utilized not to exceed the amount the sponsoring Service would have been required to pay for the available transportation.

Under these provisions of law and regulation, it is evident that Colonel Metalios was personally entitled to Government transportation from Dhahran, Saudi Arabia, to

Fort Dix, New Jersey, for purposes of separation processing. It is also evident that he was personally entitled to Government transportation from Fort Dix to his home of selection upon retirement, Athens, Greece.

Colonel Metalios was provided with a Government TR which covered his personal travel from Saudi Arabia to Fort Dix. He did not, however, travel from Fort Dix to Athens via military transport or under a Government TR, but instead elected to purchase commercial air transportation of his own choice for travel from New York City to Athens. Since it is not indicated that he first attempted to secure Government transportation or that Government transportation was unavailable, his entitlement to reimbursement is limited by paragraph M4159-4, 1 JTR, to the amount of the cost to the Government for transporting a passenger from Fort Dix to Athens. The tables of Government tariffs for military airlift contained in Air Force Regulation 76-11 in effect in February 1977, set that cost at \$239. Hence, Colonel Metalios is entitled to that amount rather than the amount claimed by him, \$492, as reimbursement for his personal travel from Fort Dix to Athens.

II. The Member's Entitlement to Have his Dependents Transported at Public Expense to his Home of Selection upon Retirement

Subsection 406(g) of title 37, United States Code, provides that under regulations prescribed by the Secretaries concerned, a member who is retired with pay is, not later than 1 year from the date he is so retired, entitled to transportation for his dependents to the home of retirement selected under 37 U.S.C. 404(c).

Implementing regulations set forth in paragraph M7010, 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 these provisions of law and regulation, Colonel Metalios was clearly entitled to have his dependents transported at Government expense to his home of selection on retirement: Athens, Greece. Army authorities expressed doubt, however, as to whether his dependents had been properly transported at Government expense from Saudi Arabia to Fort Dix, and therefore the matter of their further travel at Government expense from Fort Dix to Athens was also brought into question.

The essential issue thus presented is whether Colonel Metalios was properly authorized concurrent travel of his dependents under the PCS order transferring him from Saudi Arabia to Fort Dix for purposes of his separation processing.

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, provide 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:

* * * * *

"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;"

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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 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; and B-150187, August 26, 1977.

In the present case, there is no indication that Colonel Metalios ever intended to establish a permanent residence at or near Fort Dix, New Jersey, upon his retirement. Rather, it appears he traveled to that place on official business for the sole purpose of a brief stay to accomplish his personal separation processing prior to proceeding on to his permanent home of selection on retirement in Greece. Furthermore, there is no indication that his dependents accompanied him to Fort Dix, instead of traveling directly to the selected home in Greece, for any reasons other than personal convenience or to have a vacation in New York. Hence, under the applicable laws and regulations Colonel Metalios was not entitled to the concurrent travel at Government expense of his dependents to Fort Dix under his PCS orders.

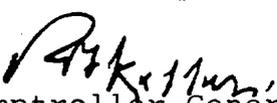
It is therefore our view that he was entitled only to have his dependents transported at Government expense directly from Dhahran, Saudi Arabia, to Athens,

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Greece. The tables of Government tariffs contained in Air Force Regulation 76-11 in effect in February 1977 set the cost of passage for one person via military transport from Dhahran to Athens at \$83. Thus, Colonel Metalios is entitled to travel allowances for his 3 dependents' travel to his home of selection in the amount of \$249. As previously indicated, he is also due a travel allowance of \$239 for his personal transportation from Fort Dix to Athens, so that he is due travel allowances in the total amount of \$488.

However, since he was not entitled to have his dependents transported from Saudi Arabia to Fort Dix, he is obligated to refund the cost of the Government TR's for their travel there via commercial airline. This obligation amounts to \$474.90 for each TR, or an indebtedness in the gross amount of \$1,424.70. We therefore have no alternative but to conclude that Colonel Metalios is due nothing on his claim and is instead indebted to the United States in the net amount of \$936.70.

Accordingly, the settlement of our Claims Division is sustained.


Deputy Comptroller General
of the United States