



The Comptroller General
of the United States

Washington, D.C. 20548

Riedinger

Decision

Matter of: Chief Warrant Officer Michael W. Pennington -
Dependent Travel - Overseas Stations

File: B-227594

Date: June 8, 1988

DIGEST

1. A member who was transferred to an overseas duty station did not have custody of his two minor children by a prior marriage at the time of transfer. Thereafter, he was granted custody by court order for a 1-year period and seeks reimbursement for their travel to his overseas station. Reimbursement is allowed. Under the provisions of paragraphs M7000-13, M7000-20 and M7016 of volume 1, Joint Travel Regulations, dependent children may be transported at government expense to a member's overseas location between PCS assignments, so long as the purpose is to change the dependents' residence. Since the member acquired custody of the minor children for an extended period, his decision to transport them to his overseas duty station was for the purpose of establishing their residence with him. See Colonel James Roche, USAF, B-198961, Mar. 18, 1981, aff'd on reconsideration, B-198961, Oct. 4, 1984.

2. A member stationed at an overseas location had court-ordered custody of his two minor children by a prior marriage. Because the children wanted to return to live with the member's former spouse, he sought their early return travel between school semesters at government expense. Under the provisions of paragraphs M7103-1 and M7103-2 of volume 1, Joint Travel Regulations, transportation of dependents from an overseas location to a designated location in the United States for compelling personal reasons is authorized at government expense if the travel is approved in advance. Since the member's request was approved in advance of travel based on the interests of the dependents, the minor dependents' travel to the member's former spouse's residence is authorized. Cf. Staff Sergeant Bobby L. James, B-200641, Apr. 21, 1981.

042447/136083

DECISION

This decision is in response to a request from the Chief, Travel Policy Branch, Office of the Director of Finance and Accounting, Department of the Army. It concerns the entitlement of Chief Warrant Officer Michael W. Pennington to be reimbursed for the travel costs, in connection with his permanent change of duty station, of two dependent children over whom he obtained legal custody.^{1/} We conclude the member is so entitled for the following reasons. X

BACKGROUND

Mr. Pennington was stationed in West Germany, and he was transferred on a permanent change of station to Hawaii with a reporting date of August 1, 1984. He was accompanied by his spouse and dependent child.

Mr. Pennington had two other dependent children by a prior marriage, Jason, age 9, and Tessa, age 10. Pursuant to the decree of divorce rendered in 1974, his former spouse was awarded "paramount care, custody and control" of those dependent children with visitation rights by Mr. Pennington. By court order dated September 21, 1984, the terms of that divorce decree were modified. Mr. Pennington was awarded "temporary exclusive legal and physical custody of said children" for the 1984-1985 school year and for 3 months thereafter, during which time he was authorized to move the children to Hawaii. At the conclusion of that period, he was to return both children to his former spouse in Mississippi and she would regain full physical and legal custody. By orders dated September 26, 1984, Mr. Pennington was authorized to transport both children to Hawaii at government expense, and they arrived in Hawaii on September 29, 1984.

For reasons not completely clear in the submission, the former spouse sought to regain custody of both children in January 1985. Although no court order was issued further modifying the 1974 decree of divorce, the member sought command approval for their immediate return to his former spouse. By orders dated January 29, 1985, their return travel was authorized and travel was performed on February 1.

^{1/} This case has been assigned Control No. 87-17 by the Per Diem, Travel and Transportation Allowance Committee.

By court order dated February 5, 1985, the original divorce decree was again modified. This time Mr. Pennington was granted the custody of the younger of the two children, Jason, with visitation rights by the former spouse. After considerable delay, Jason arrived in Hawaii on December 17, 1985.

By court order dated August 12, 1986, Mr. Pennington was granted the custody of the older dependent child, Tessa, with visitation rights by the former spouse. On August 15, 1986, the member requested dependent travel for Tessa, and on August 18, 1986, he requested that his overseas service tour be extended an additional 36 days so that he would have the required 1 year remaining on his overseas tour in order that Tessa could be command approved. Both requests were approved.

Following these actions, the expenses incurred by the Army for the dependents' travel were reviewed, and on December 17, 1986, Mr. Pennington was informed that he was indebted in the amount of \$2,473 representing unauthorized transportation allowances for dependent travel. Mr. Pennington challenged the validity of that determination and in the alternative, the correctness of the amount of the debt.

The Office of the Director of Finance and Accounting, Department of the Army, has reviewed Mr. Pennington's case and has determined that the final trips by Jason and Tessa in December 1985, and August 1986, respectively, which were incident to the court-ordered changes of custody from Mr. Pennington's former spouse to him are authorized. We concur. The question presented is whether the member is entitled to have his two children transported to Hawaii and returned at government expense during the period of his temporary custody from September 1984 to January 1985.

In this connection, the submission points out that the wording of the Joint Travel Regulations, vol. 1, M7000-13 (Change No. 375, May 1, 1984), requires that the travel must be for the purpose of establishing a residence. Subsequent amendments to the regulation introduced the word "permanent" as a restrictive modifier to the word "residence." It is suggested that the current wording and application is clear. However, in view of the vagueness of the wording in Change No. 375 and the lack of a definition of the word "residence" in 1 JTR, the Army is unsure of the allowance in the case. The Army also pointed out that while the period of custody in the member (1 school year plus 3 months) can reasonably be interpreted as more than a pleasure trip, it is

questionable whether the allowance should be paid each time temporary custody changes.

RULING

Under the provisions of 37 U.S.C. § 406(a)(1) (1982), a member of a uniformed service who is ordered to make a change of permanent station is entitled to transport his dependents at government expense. Additionally, subsection 406(h) of that section provides, in part, that where dependents have accompanied the member to an overseas location and where it is determined that it is in the best interest of the member or his dependents and further permanent change-of-station orders have not been issued, the dependents may be returned to an appropriate location in the continental United States. The regulations issued in implementation of these provisions for the period during which the travel was performed are those contained in chapter 7 of volume 1 of the Joint Travel Regulations.

Dependent Travel - September 1984

Paragraph M7000-13 of 1 JTR (Change No. 375, May 1, 1984), authorizes transportation of dependents incident to a permanent change of station with the exception of travel 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 . . . may not be considered an obligation of the Government"

Additionally, paragraph M7000-20 of 1 JTR excludes travel by dependent children who are not under the legal custody and control of the member on the effective date of his permanent change of station orders. However, that paragraph goes on to state that when legal custody or control of dependent children changes after permanent change-of-station orders are issued, paragraph M7016 controls travel entitlement. That latter paragraph provides, in part, that when an original decree of divorce is changed and the member is granted custody/joint custody of children, the member is entitled to travel and transportation allowances on their behalf, subject only to the monetary limitation prescribed in paragraph M7058.

Thus, under the regulations, a member is entitled to transportation allowances for dependent children between permanent change-of-station assignments if he acquires

custody or control over them, so long as it is intended that the dependent travel is for the purpose of changing the dependents' residence.

The word "permanent" was introduced to paragraph M7000-13 along with other substantial changes by Change No. 396 (Feb. 1, 1986) as a result of our decision in Colonel James Roche, USAF, B-198961, Mar. 18, 1981, affirmed on reconsideration, B-198961, Oct. 4, 1984. In Roche we ruled that a member of the uniformed services may not be reimbursed for travel by his college student-dependent from the United States to the member's overseas duty station where the stay is for a brief period during a school semester break or recess while attending an educational institution in the United States. In our reconsideration of Roche, we stated further the longstanding rule that dependent travel incident to the member's permanent change of station must be for the purpose of establishing a residence. B-198961, Oct. 4, 1984.

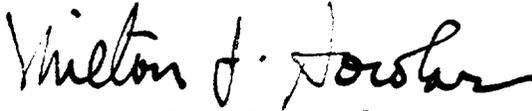
In the present case, Mr. Pennington's dependents were not traveling to Hawaii during a semester break or merely for visitation purposes. Rather, Mr. Pennington had been granted legal custody by the court, albeit limited to a 1-year period, and we believe that this travel to Hawaii was for the purpose of establishing a residence as contemplated under the applicable provisions of 1 JTR, para. M7000-13. Therefore, the authorization issued to Mr. Pennington for that travel of his dependents was proper.

Early Return of Dependents - February 1985

Paragraph M7103-1 of 1 JTR (change 379, Sept. 1, 1984) provides that a member stationed outside the United States may be authorized transportation of dependents to a designated place in the United States even though the member's permanent duty station remains unchanged. Paragraph M7103-2 of 1 JTR, which describes types of cases for which transportation is authorized, states in subparagraph 7 that dependents can be returned for compelling personal reasons, including "reasons of a humanitarian or compassionate nature."

While it is not completely clear why his former spouse sought to regain custody of the two children, Mr. Pennington's request for their return travel stated that it was the children's desire to return and reside with his former spouse and their immediate early return was required to avoid time lost from school. In view of the fact that the dependents' return travel was approved in

advance of actual travel, Mr. Pennington is entitled to have his dependent children transported to the residence of his former spouse at government expense. Cf. Staff Sergeant Bobby L. James, B-200641, Apr. 21, 1981.

for 
Comptroller General
of the United States