

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

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FILE: B-181629

DATE: JUL 16 1975

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**MATTER OF: Travel allowance upon retirement -
Colonel Marvin J. Berenzweig, USA, Retired****DIGEST: Travel of a member of the uniformed services,
and his dependents, in contemplation of the
member's retirement from the service, to a place
at which he spends less than a week surveying
the job market does not show an intent to estab-
lish a home, and will not be considered travel
to a selected home upon retirement for entitle-
ment to travel and transportation allowances.**

This action is in response to a letter dated May 24, 1974, from Colonel Marvin J. Berenzweig, USA, Retired, constituting an appeal from a Transportation and Claims Division settlement dated March 26, 1974, disallowing his claim for dependent travel from last duty station to requested place of retirement pursuant to Letter Orders Number D2-443, dated February 13, 1973, issued by the Office of the Adjutant General, Department of the Army, Washington, D.C.; Special Orders Number 37, paragraph 4, Headquarters, United States Army, Pacific, dated February 23, 1973; and Special Orders Number 48, paragraph 2, Headquarters Fort MacArthur, San Pedro, California, dated March 12, 1973.

Colonel Berenzweig was authorized permissive travel for himself from his last permanent duty station in Hawaii to his requested place of retirement, Fort MacArthur, California, pursuant to Special Orders Number 37, which also authorized concurrent travel for his dependents to their point of debarkation in the United States.

The record shows that Colonel Berenzweig accompanied by his dependents traveled from Honolulu, Hawaii, to Los Angeles, California, on March 7, 1973, utilizing Transportation Requests provided by Headquarters, United States Army Support Command, Hawaii. The record indicates that Colonel Berenzweig returned to Hawaii on March 11, 1973. Colonel Berenzweig indicates in his appeal that the record is in error in that he actually returned to Hawaii on March 13, 1973, the effective date of his retirement. In any event it appears that he spent less than a week in Los Angeles before returning to Hawaii.

B-181629

Colonel Berenzweig has stated that upon his retirement he intended to reside in the Los Angeles area and that he went there to survey the employment possibilities with relatives and to re-establish a residence there. He further stated, however, that coincident with his retirement date, an unfortunate family problem occurred and without hesitation, he made the decision to elect Honolulu as his "final home of selection."

The pertinent statutes, 37 U.S.C. 404(c) and 406(g) (1970) provide that, under uniform regulations prescribed by the Secretaries concerned, a member of the uniformed services who is retired in the circumstances described may select his home for the purposes of travel and transportation allowances payable under those sections. Regulations issued pursuant to that authority are contained in the Joint Travel Regulations. Paragraph M1150-3(b) (change 228, Feb. 1, 1972), of the regulations provides that the term "home of selection" as used in these regulations means the place selected by a member as his home upon retirement. Paragraph M4158-1a (change 234, Aug. 1, 1972), provides that a member upon retirement may select his home and receive travel allowances thereto, provided travel is completed to the selected home within one year after termination of active duty. Paragraph M7010-1a (change 209, June 1, 1970), contains similar provisions pertaining to dependents' transportation to the home of selection.

The purpose of the statute and regulations is to authorize transportation at Government expense for a member and his dependents to the place where he goes to reside following retirement. See 36 Comp. Gen. 774 (1957). The intent to establish a home at the selected place, at the time of travel thereto by a member, is a necessary condition precedent to the right to travel and transportation allowances to such place. The best evidence, of course, that the travel for which a member seeks reimbursement was to a place selected by him as his home, is his continued residence at that place. In cases in which the member's stay in a particular place does not exceed the span of short visit, vacation or business trip, the conclusion, in the absence of other clear and convincing evidence to the contrary, is that the travel involved was not travel to a selected home within the purview of the Joint Travel Regulations. See 52 Comp. Gen. 242, 244 (1972).

B-181629

In the circumstances of this case it appears that while Colonel Berenzweig may have contemplated selecting Los Angeles as his home upon retirement, his final selection upon retirement was Honolulu. Accordingly, payment of dependents' travel and transportation allowances is not authorized and the settlement of March 26, 1974, is sustained.

Paul G. Dembling

For the Comptroller General
of the United States