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

B-197463

March 3, 1980

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The Honorable Strom Thurmond
United States Senate

Dear Senator Thurmond:

Reference is made to your recent correspondence, with enclosure, regarding the request of your constituent, Lieutenant Colonel Donald E. Andersen, USMC, for assistance in determining whether he should have been entitled to an early return of his son from Japan to the United States at Government expense to attend college.

According to Colonel Andersen, he was denied authorization for an early return of his dependent to attend college. However, his dependent was authorized Government space available transportation with a 66-pound baggage limitation. Colonel Andersen indicates that he understood that the relevant regulations would have enabled him to have his son return to the United States on space-required travel but that one of our recent decisions changed this.

The following information is being supplied to you so that you may be responsive to the request of your constituent.

The entitlement to the transportation of dependents between the United States and overseas at Government expense is provided by law, specifically section 406 of title 37, United States Code (1976), which generally provides that such transportation is authorized when the member is ordered to make a change of permanent station. Accordingly, ordinarily a dependent does not have a right to a return trip to the United States at Government expense unless it is in connection with a change of permanent station by the member. However, sections 406(e) and 406(h) of title 37 provide limited exceptions to the general rule. Section 406(e) permits

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return of dependents without a change of permanent station by the member stationed overseas when the Secretary concerned determines that there are unusual or emergency circumstances. Section 406(h) permits such return if the Secretary concerned determines it to be in the best interests of the United States and the member or his dependents. The regulations implementing those provisions of law are found in Volume 1, Joint Travel Regulations (1 JTR), Chapter 7, Part C, entitled "Transportation of Dependents Under Unusual or Emergency Circumstances."

Paragraph M7103, contained in Part C, 1 JTR, entitled "TRANSPORTATION OF DEPENDENTS INCIDENT TO UNUSUAL OR EMERGENCY CIRCUMSTANCES - PERSONAL SITUATIONS" provides in subparagraph 1 that a member permanently stationed outside the United States may request, and may have authorized, transportation of dependents to a designated place notwithstanding the fact that his permanent station remains unchanged. Subparagraph 2 provides the types of cases in which such transportation of dependents may be authorized, which are limited to those which meet certain specified conditions, one of which is included in item 5 of that subparagraph, as follows:

- "5. lack of adequate educational facilities * * * for dependents when supported by a statement of the approving authority that the inadequacy of such educational facilities * * * was caused by conditions beyond the control of the member and arose after commencement of travel of dependents to the member's overseas station * * *" (Emphasis added.)

In the decision of 47 Comp. Gen. 151 (1967), it was stated that when a member was aware of the lack of educational facilities for his children prior to his departure to the overseas station the unavailability of school facilities for the member's children was not the unusual or emergency circumstances contemplated by 37 U.S.C. 406(e) and paragraph M7103-2, item 5, 1 JTR. That decision also held that 37 U.S.C. 406(h) was not sufficient

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authority to authorize a change in the regulations to permit return of dependents from overseas due to lack of educational facilities when the lack of such facilities was known at the time the member was ordered overseas. See also 57 Comp. Gen. 343 (1978).

Enclosed are copies of decisions 47 Comp. Gen. 151, and 52 Comp. Gen. 847 (1973) which discuss the legislative history of 37 U.S.C. 406(e) and 406(h) and the purposes of their enactment. Also, enclosed is a copy of 57 Comp. Gen. 343 (1978) which reaffirms our decisions in this area.

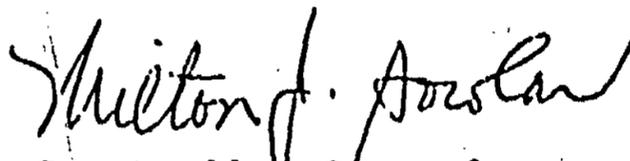
Although the full cost of early return of dependents may be precluded under the statutory and regulatory scheme in cases such as Colonel Andersen's, the dependent, if engaged in full-time undergraduate study in the continental United States, is permitted space available transportation under Department of Defense Regulation 4515.13R, paragraph 4-4. See 57 Comp. Gen. supra (1978). Apparently, that is the type of transportation which was authorized for Colonel Andersen's son.

Accordingly, while Colonel Andersen indicates that he was informed that the disapproval of his dependent's space-required travel was based on one of our recent decisions, our position in that regard has not recently changed and is clearly stated in the enclosed decisions.

We trust this information will serve the purpose of your inquiry and regret that it could not be more favorable to your constituent. Your correspondence is being returned as you requested.

Sincerely yours,

For The



Comptroller General
of the United States

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