

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-212088**DATE:** August 2, 1983**MATTER OF:** Colonel Anthony A. Borski, USA, Retired

DIGEST: Upon his retirement in Frankfurt, Germany, an Army physician decided that return travel to the United States by air was medically contraindicated for himself and his wife. Passenger service was not available on vessels of United States registry, so they returned by way of a vessel of foreign registry. In the absence of an official authorization for surface travel, reimbursement for the transoceanic travel of the retired member and his dependent is limited to the cost of Government, if available, or Government-procured air transportation, whichever is less.

Colonel Anthony A. Borski, U.S.A., Retired, appeals the March 9, 1983 settlement of the Claims Group, which denied his claim for transportation expenses incurred in travel by foreign registry vessel. We find that Colonel Borski's travel entitlement based on the present claim is limited to the constructive travel costs by Military Airlift Command for his and his wife's transoceanic travel.

Colonel Borski retired from the Army on June 1, 1981, at Frankfurt, Germany, where he had been stationed. His separation travel orders authorized his and his dependent's return travel to the United States at Government expense. Colonel Borski, a medical doctor, states that in view of his then recent coronary artery occlusion and the cardiac disease of his wife, he decided that as health precautions, surface travel was indicated for them. On May 31, 1981, he and his wife departed Frankfurt and traveled to Southampton, England, where they embarked on a surface vessel of British registry and traveled to New York. From New York they traveled to their home of selection in Colorado by private automobile. They have been paid a mileage allowance for the distance from McGuire Air Force Base, New Jersey (the usual Government airport of debarkation), to their home in Colorado. Colonel Borski also seeks reimbursement for his and his wife's transoceanic travel in the amount of \$2,112.

The Army denied Colonel Borski's claim on the basis of the provisions of the Joint Travel Regulations, Volume 1 (1 JTR), paragraph M2151, which prohibits the payment of travel and transportation expenses when a foreign registry vessel is used unless there is no United States vessel available. The present record contains a statement dated October 27, 1981, signed by a transportation officer of the Frankfurt station, which states that there are no United States registry passenger ships outbound from Germany to the United States.

Under the provisions of 1 JTR a member traveling under separation orders is entitled to travel by Government air or Government-procured air for personal and dependent transoceanic travel. 1 JTR, paragraphs M4159-1.2, M4159-3a, and M7002-1b(1). However, when air travel is medically contraindicated for the member or accompanying dependent, surface travel by way of the least costly first-class passenger accommodations on a commercial ship may be authorized. 1 JTR, paragraphs M4159-4b, M7002-1b(2), and M7002-2b(2). If travel by vessel is authorized, vessels registered under the laws of the United States must be used unless there are none available, in which case the use of a vessel of foreign registry may be authorized. 1 JTR, paragraphs M2151 and M4159-4c.

Although Colonel Borski has forwarded the statement of the transportation officer concerning the unavailability of passenger vessels of United States registry from Germany to the United States, that statement provides no basis for payment of the claimed expenses in the absence of a valid authorization of surface transportation for the transoceanic travel. Such authorization would ordinarily be based on an official service medical opinion and a statement certifying the contraindication of air travel included in the member's travel orders.

Although we assume Colonel Borski was a practicing physician at the time he retired from the Army, his personal determination of his and his wife's medical condition is not a proper or sufficient basis to effect an exception to normal travel requirements. See Matter of Austin, B-197049, April 1, 1980, and Matter of Hamara, B-183310, September 9, 1975, and December 3, 1976.

Since Colonel Borski and his wife were authorized, rather than directed, to use Government or Government-procured transportation, but they traveled by ship without authorization for surface travel, reimbursement for the transoceanic portion of their travel is governed by the provisions of 1 JTR, paragraph 4159-4a, which provides in relevant part:

"* * * When travel by Government transportation is authorized, * * * and 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 which the sponsoring Service would have been required to pay for the available transportation. If Government transportation and Government-procured transportation are both available, the lowest priced one will be the maximum measure of entitlement for reimbursement."

See also the similar provisions applicable to dependents' travel in 1 JTR, paragraph M7002-2b(1). Accordingly, payment of Colonel Borski's claim for his and his wife's travel from Frankfurt to New York is limited to the lesser of the amounts the Army would have been required to pay for Government air transportation, if that was available, or the cost of Government-procured commercial air transportation. Settlement will be made in due course on this basis.

for 
Comptroller General
of the United States