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DECISION



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

FILE: B-207157

DATE: February 2, 1953

MATTER OF: Travel and transportation on retirement from the uniformed services

DIGEST:

Approval is given a proposed revision of Volume 1 of the Joint Travel Regulations to extend the one-year time limit for selecting a home upon retirement in deserving cases under circumstances in which the reason for the delay is in the best interest of the service concerned or the delay will not be to the financial or other detriment of the service concerned, provided it is clearly stated that travel must be incident to separation.

The Assistant Secretary of the Navy (Manpower and Reserve Affairs) has requested a decision on whether it is legally permissible to amend Volume 1 of the Joint Travel Regulations (1 JTR) to authorize the Secretaries of the uniformed services to extend the one-year time limit for selecting a home upon retirement for purposes of travel and transportation to certain situations that are presently outside those authorized. Within the limitations explained below we approve the proposed amendment.

The Per Diem, Travel and Transportation Allowance Committee has assigned the request Control No. 82-8.

Paragraphs M4158-2, M7010-2, and M8262-6 of 1 JTR, provide that a retired member must complete travel and transportation of the dependents and household goods to his selected home within one year of his retirement unless the member is undergoing hospitalization or medical treatment, is pursuing a course of education or training, or is subject to some unexpected event beyond his control. The submission goes on to point out that these regulations have required the services concerned to deny certain requests for extensions that have merit since the situations precipitating the requests are not strictly beyond the control of the member.

Examples of situations for which extensions now cannot be granted under the regulations are:

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1. A doctor retires while stationed in Southeast Asia and volunteers his medical services to aid refugees;
2. A member retires and his or her spouse is also a member who must wait an additional two years to retire;
3. A retired member's spouse is undergoing medical treatment (not considered a terminal illness). For personal reasons, the member and spouse elect to continue treatment with original doctor to enhance chances of a speedy recovery; and
4. A member retires while stationed in Germany and accepts employment with a defense contractor in a position critical to the contractor's mission.

The Assistant Secretary proposes to amend the pertinent regulations to provide that:

"An extension of the time may also be authorized or approved by the Secretary of the service concerned or his designated representative upon a finding that it is in the best interest of the service, either financially or otherwise, or substantially to the benefit of the service member and not more costly or otherwise adverse to the service, that such extension be granted."

Sections 404 and 406 of title 37, United States Code, were amended by Public Law 89-680, dated October 15, 1966, 80 Stat. 957, to provide a one-year limit on the period in which a member, who is otherwise eligible, may select a home upon separation, must travel to that home and move his dependents and household goods. Exceptions to this one-year limit are permitted "as prescribed in regulations by the Secretaries concerned."

Prior to the enactment of the amendment the laws relating to travel of members to their homes of selection upon retirement and for the transportation of their dependents and household goods did not prescribe a time limit

within which a service member had to use his entitlement. Although no time limit was set out, we recognized the long-standing administrative rule that one year is a reasonable time to use the entitlement unless the travel is prevented by circumstances beyond the control of the member. We also commented that any time over the one year would tend to have the travel lose its character of being related to the retirement and we held that without specific statutory authority no travel or transportation could be allowed if it was not performed within that one-year period. 40 Comp. Gen. 375 (1960). The legislative history of the amendment to 37 U.S.C. 404 and 406 shows that the Congress intended, as well as setting a one-year limit, that the Secretaries concerned would be able to extend the one-year limitation in cases where the member was confined in a hospital, undergoing vocational training, and certain other deserving cases. H.R. Rep. No. 962, 89th Cong., 1st Sess. 2 and 3 (1965).

Since Congress passed Public Law 89-680 with full knowledge of our decision in 40 Comp. Gen. 375 (1960), we have concluded that Congress intended to retain the principles we set out in that case which included the principle that the one-year limitation ensures that the travel would be related to retirement. B-126158, April 21, 1976.

In B-126158, April 21, 1976, we approved regulations which would authorize extensions for deserving cases where the delays were due to: (1) a spouse's terminal illness, (2) death of a close family member near the time of a planned move, (3) and a strike causing a retirement home to be unfinished.

We also noted in the decision that:

"In view of the remedial character of the legislation and the fact that the Secretary of the service involved was to have authority to determine which cases were deserving of an extension of the one-year limitation, we believe that a regulation giving general guidelines with respect to the use of this authority would be appropriate. Accordingly, a regulation which would permit the Secretaries concerned to grant extensions

in appropriate circumstances would, in our opinion, be proper provided that such authority is limited to cases in which an unexpected event beyond the control of the member has occurred which prevented him from moving to his home of selection in one year (which he would otherwise have done) and provided that extensions are given in terms of limited periods of time as justified by the reason for the delay in moving."

The language of the above quotation reflected that we were asked to comment only on the propriety of a general regulation which would permit extensions to be granted in cases where delay was due to a cause beyond the member's control. Therefore, we limited our approval of such a regulation to that circumstance. However, we did not intend to preclude the consideration of other situations as being within the authority of the Secretaries concerned to provide for extensions of the one-year limit. The primary requirement is that this travel be the result of separation from the service, since it is not a benefit which the separated member retains until used regardless of circumstances.

We consider the supplied examples listed previously as meeting the requirements of the law and have no objection to the proposed amendment as long as it clearly states the requirement that the proposed travel be incident to separation from the service.

The submission is answered accordingly.

for Milton J. Aorolan
Comptroller General
of the United States