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DECISION



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

M. J. ...
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FILE: **B-188481**

DATE: **DEC 29 1977**

MATTER OF: **DOD Military Pay and Allowances Committee
Action No. 535, Addenda A and B**

- DIGEST:
1. When a member without dependents is offered an assignment to adequate Government quarters and chooses not to occupy such quarters for personal reasons, he is considered to have been assigned Government quarters within the meaning of 37 U. S. C. 403(b) and is not entitled to a basic allowance for quarters (BAQ) even if quarters are subsequently assigned to another member. Therefore, since the member is not entitled to BAQ because of 37 U. S. C. 403(b), partial BAQ may be paid under 37 U. S. C. 1006(d).
 2. A member assigned to sea duty who occupies Government family-type quarters assigned to his spouse when the vessel is in port is assigned to quarters on the vessel and is considered a member without dependents by virtue of 37 U. S. C. 420 (1970). Therefore he is not entitled to BAQ under 37 U. S. C. 402(c), and is entitled to partial BAQ authorized by 37 U. S. C. 1006(d).

This action is in response to a request for advance decision from the Assistant Secretary of Defense (Comptroller) concerning entitlement to partial basic allowance for quarters (BAQ). Questions have arisen as a result of the enactment of section 303 of Public Law 94-301, July 14, 1976, 90 Stat. 923, 925, which added 37 U. S. C. 1006(c) - (f). Two questions together with discussions thereof are presented as addenda A and B to Department of Defense Military Pay and Allowance Committee Action No. 535. Decision B-188481, August 10, 1977, 56 Comp. Gen. 884, was issued in response to 4 other questions concerning partial BAQ previously presented in Committee Action No. 535.

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The first question presented is as follows:

"Is a member without dependents entitled to partial BAQ when, in accordance with applicable service regulations, he voluntarily declines to occupy Government quarters, acknowledges he has no entitlement to BAQ, and those quarters are subsequently assigned to someone else?"

Sections 1009(a) and (b), title 37, United States Code, provide for upward adjustments in the basic pay, basic allowance for subsistence and BAQ of members of the uniformed services whenever there is an adjustment in the General Schedule of compensation for Federal classified employees. Such adjustments are to be of the same overall percentage as the increase in General Schedule rates. Under section 1009(c) the President may allocate the overall average percentage increase among the elements of compensation on an other than equal percentage basis. When the President chooses to allocate the increase on an other than equal percentage basis, section 1009(d), which provides as follows, authorizes payment of a "partial" BAQ to certain members without dependents:

"(d) Under regulations prescribed by the President whenever the President exercises his authority under subsection (c) to allocate the elements of compensation specified in subsection (a) on a percentage basis other than an equal percentage basis, he may pay to each member without dependents who, under section 403(b) or (c), is not entitled to receive a basic allowance for quarters, an amount equal to the difference between (1) the amount of such increase under subsection (c) in the amount of the basic allowance for quarters which, but for section 403(b) or (c), such member would be entitled to receive, and (2) the amount by which such basic allowance for quarters would have been increased under subsection (b)(3) if the President had not exercised such authority."

Subsection 403(a) of title 37, United States Code, authorizes the payment of BAQ, with the limitations of subsections 403(b) and (c) that entitlement does not exist when a member is assigned to quarters of the United States or when on field duty or sea duty. A member

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without dependents who is in a pay grade above O-8 may elect not to occupy Government quarters and receive the BAQ instead.

It is stated in the Committee Action that Interim Change 304, dated October 27, 1976, to the Military Pay and Allowances Entitlements Manual provides in part that "Members without dependents, who are assigned to Government quarters but choose to reside in private quarters without receiving BAQ, are entitled to partial BAQ." The intent of this regulation was that members must actually be assigned to the Government quarters even if they chose to reside off base without BAQ before entitlement to the partial BAQ accrues.

In this regard it is noted in the Committee Action that Air Force Regulation 29-7, paragraph 3-14, "Bachelor Housing and Transient Quarters", requires a member to sign a statement which in effect provides that he acknowledges quarters are available for assignment to him and that he voluntarily declines the use of the quarters and will not be entitled to BAQ as a result. The regulation also provides that the member will not be required to maintain quarters on the base.

This policy, while not specifically approved, it is stated, appears to be supported by decisions of this Office and the courts. The phrase "assigned to quarters" as used in 37 U. S. C. 403(b) has been construed as not requiring actual assignment to Government quarters in order to preclude the payment of BAQ, but rather availability of quarters for assignment is the determinative factor. It is also stated that differences of opinion exist concerning whether 37 U. S. C. 403(b) should be construed to preclude the payment of BAQ to a member who voluntarily declines the assignment of Government quarters and these quarters are subsequently assigned to another member. If the statute is construed to preclude payment in such cases, Interim Change 304 referred to above, would then have the effect of requiring a different interpretation of the phrase "assigned to quarters" for the purpose of entitlement to BAQ on one hand, and partial BAQ authorized by 37 U. S. C. 1009(d) on the other. In the absence of an expression of congressional intent to the contrary, it is stated that this should not be the case even though these allowances are authorized by different provisions of law.

The facts in individual cases concerning entitlement to BAQ, are determinative; however, as a general rule, when a member is informed that adequate Government quarters are available for assignment to him, and he chooses not to occupy those quarters for

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personal reasons, he has been "assigned" Government quarters within the meaning of 37 U. S. C. 403(b), and therefore is not entitled to BAQ. See 52 Comp. Gen. 84 (1972) and cases cited therein, and McVane v. United States, 118 Ct. Cl. 590 (1951).

Furthermore, the Government's obligation to a member is fulfilled when he is notified that adequate quarters are available for assignment to him. The subsequent assignment of the quarters to another member does not create a right to BAQ in the member who voluntarily chose not to occupy the quarters, since the Government is not required to maintain empty quarters for assignment to him in order to avoid liability for the payment of the BAQ. See B-187222, May 6, 1977, and B-185408, November 23, 1964.

Under 37 U. S. C. 1009(d) a member who is not entitled to BAQ under 37 U. S. C. 403(b) or (c) is entitled to partial BAQ, unless assigned to family-type Government quarters. 38 Comp. Gen. 894, supra. Accordingly, the first question is answered in the affirmative.

The second question presented relates to question 1 in Committee Action No. 535 which was:

"1. Does the term 'member without dependents', as used in 37 U. S. C. 1009(d), include a member married to a member when neither has a dependent other than his or her spouse?"

The question now presented is:

"If the answer to question 1 is affirmative, is such a member entitled to partial BAQ when assigned to sea duty and occupies family-type public quarters, which are assigned to his spouse, during periods the ship is in port?"

In our response to question 1 in the decision of August 10, 1977, we concluded that while a spouse is defined as a dependent for the purpose of BAQ entitlement by 37 U. S. C. 401 (1970), the provisions of 37 U. S. C. 420 (1970) preclude the payment of increased allowances on the basis of a dependent who is entitled to basic pay. Thus, a member married to a member with no other dependents assigned to

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single-type Government quarters would be considered a member without dependents and would be entitled to the partial BAQ authorized by 37 U.S.C. 1000(d). Thus, the question was answered in the affirmative.

In considering other questions presented in Committee Action No. 538, we pointed out that the intent of the Congress in authorizing the partial BAQ under 37 U.S.C. 1000(d) was that since the value of Government single quarters was substantially less than the value of Government family quarters, members assigned to Government single quarters should be entitled to additional compensation when a general reallocation of compensation was accomplished under the provisions of 37 U.S.C. 1000(e). Thus, we concluded that a single member assigned to Government family-type quarters would not be entitled to the partial BAQ since the member would be assigned to the higher value type housing. Similarly a member married to another member who is assigned Government family-type quarters would not be entitled to the partial BAQ authorized by 37 U.S.C. 1000(d).

In the situation presented in the second question, the member assigned to the Government family-type quarters is not entitled to the partial BAQ under 37 U.S.C. 1000(d) for the before-stated reasons. However, the member assigned to sea duty with quarters assigned on the vessel is still considered to be a member without dependents by virtue of 37 U.S.C. 420. Since the member is assigned to and by necessity occupies the quarters on the vessel, and is not entitled to BAQ because of 37 U.S.C. 403(c), he is entitled to the partial BAQ authorized by 37 U.S.C. 1000(d) whether or not he occupies the Government family-type quarters with his spouse while the vessel is in port. The second question is answered in the affirmative.

R. F. KELLER

Acting

Comptroller General
of the United States