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Matter of: Entitlement to Basic Allowance for Quarters
(BAQ) While Occupying Government Quarters

File: Department of Defense General Counsel Opinion:
DoD/GC #97-10

Date: December 8, 1997

DECISION

An official of the Defense Finance and Accounting Service has requested an advance decision under 31 U.S.C. § 3529 concerning whether a member, who had voluntarily moved into Government quarters during a month, could continue to receive BAQ for the remainder of that month where the member was still obligated to pay the lessor of the private quarters for that period. The request was submitted to the General Accounting Office (GAO) on November 30, 1995; however, as a result of the transfer of functions from GAO to the executive branch mandated by Public Law No. 104-316, October 19, 1996, and in accordance with subsequent delegations, the matter has been transferred to this office for resolution. For the reasons set forth below, we conclude that members, whether moving voluntarily or under orders into Government quarters, are not entitled to BAQ from the date of assignment of the Government quarters.

BACKGROUND

This case involves a military member who resides in private rental quarters, but wants to reside in Government quarters. Upon notification that Government quarters are available, the member elects to move his family from the private quarters into the "assigned" Government quarters. In the case at hand, the member's election to reside in Government housing is strictly the member's choice, *i.e.*, the member was not ordered to reside in Government quarters.

ANALYSIS

Pursuant to 37 U.S.C. § 403(a), a member who is entitled to basic pay is entitled to BAQ; however, a member who is assigned to adequate Government quarters is not entitled to BAQ, with



certain exceptions not relevant here. 37 U.S.C. § 403(b). The term "assigned" is not defined in 37 U.S.C. § 403, but, generally, Government quarters that are occupied by a member are deemed to be adequate quarters assigned to that member. Section 403, Executive Order 11,157, 3 C.F.R. 200 (1964-1965).

Under certain circumstances, agency regulations and Comptroller General decisions have permitted payment of BAQ after assignment of quarters. Specifically relevant here, the Comptroller General issued a decision addressing the situation where a member was apparently ordered into Government quarters during the month but was obligated under a lease to pay rent on private quarters for the remainder of that month. The decision noted that a study had shown that it was more beneficial to move members into Government housing as soon as it became available. Based on that study, the Army V Corps had issued an implementing memorandum stating that no soldier should be assigned to nor terminated from Government quarters in any manner which would require the soldier to involuntarily bear the expense of maintaining two sets of quarters. The Comptroller General therefore opined that payment of BAQ was permissible for the remainder of a month under these circumstances. Comp. Gen. B-245318, September 30, 1992. This decision was incorporated into the DoD Financial Management Regulation. DoD 7000.14-R, volume 7A, paragraph 260302H.

As noted above, however, there is generally no statutory entitlement to BAQ once Government quarters are assigned. "It is fundamental that Federal agencies and officials must act within the authority granted to them by statute in issuing regulations." 64 Comp. Gen. 319, 321 (1985). Therefore, where there is no statutory authority to continue to pay BAQ to a member who occupies Government quarters, either voluntarily or under orders, adherence to agency regulations or decisions of the Comptroller General that prescribe such payment is improper. Consequently, payment of this type of claim must be denied. However, although payment in this specific case must be denied, this decision should otherwise be applied prospectively only, since it represents a substantial departure from Comp. Gen. B-245318, September 30, 1992, and DoD 7000.14-R, volume 7A, paragraph 260302H, discussed above. Paragraph 260302H should be changed to comply with this opinion.

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