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**DECISION**



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

50508

**FILE:**

**DATE:**

**February 4, 1975**

**MATTER B#76083**

**DIGEST:**

**Claim for additional basic allowance for quarters (BAQ) - Michael H. Stiles**

Claim of Air Force sergeant for payment of retroactive increase of BAQ authorized by Public Law 92-129, through November 14, 1971, end of 90 day wage-price freeze imposed by Executive Order No. 11,615, August 15, 1971, issued pursuant to Economic Stabilization Act of 1970 and the 1971 amendments thereto, on reconsideration is denied since the legislative history of Public Law 92-129, indicated an awareness of and acceptance by Congress of the broad authority vested in President by ESA to freeze military pay and allowances at rates in effect prior to the wage-price freeze imposed by Executive Order No. 11,615.

This action is in response to a letter dated November 8, 1974, from Mr. Michael H. Stiles, concerning his claim for additional basic allowance for quarters (BAQ) for the period of July 1, 1971, through November 13, 1971, under the provisions of title II of the act of September 28, 1971, Public Law 92-129, 85 Stat. 355, wherein he requests reconsideration of our decision B-176083, July 7, 1972 (52 Comp. Gen. 15).

In that decision we took the position that in light of the broad authority vested in the President by the Economic Stabilization Act of 1970 Public Law 91-379, 84 Stat. 799, — the authority under which he froze military pay increases authorized by the act of September 28, 1971 — and in the absence of some specific statutory authority or legislative intent to the contrary, increases in military pay and allowances authorized by the act of September 28, 1971, were not payable for any period prior to November 14, 1971.

Title II of the act of September 28, 1971 (Public Law 92-129), authorized increases in quarters allowance for all military personnel and increases in basic pay for those members in the lower grades with short periods of service, effective October 1, 1971, and

amended the Dependents Assistance Act of 1950, to authorize increases in quarters allowances for the lower enlisted grades effective July 1, 1971. It is also noted section 105 of Public Law 92-129 extended the termination date of the Dependents Assistance Act of 1950 by substituting "July 1, 1973" for "July 1, 1971."

Under the provisions of section 209 of the 1971 act, the new pay rates were to become effective on October 1, 1971. However, on October 1, 1971, the Cost-of-Living Council, established by Executive Order No. 11,613, dated August 15, 1971, ruled that all increases in pay and allowances authorized for military personnel by Public Law 92-129 were subject to the wage-price freeze imposed by Executive Order No. 11,613.

Unlike the other pay and allowance increases provided by Public Law 92-129, the B3 increase for enlisted personnel subject to the 1950 act had in effect terminated before the wage-price freeze and was reinstated by Public Law 92-129. A question is raised as to whether in view of that circumstance the increases under the Dependents Assistance Act of 1950 should not have become effective on a retroactive basis to July 1, 1971, without regard to the wage-price freeze. In this regard, section 105 of Public Law 92-129 provides:

"Section 16 of the Dependents Assistance Act of 1950 (50 App. U.S.C. 2216) is amended by striking out 'July 1, 1971' and inserting in place thereof 'July 1, 1973'."

Section 209 provides:

"The foregoing provisions of this title shall become effective on October 1, 1971, except that \* \* \* section 209 shall become effective July 1, 1971." (Section 209 contains the higher rate for BA.)

H. R. 6531, 92d Cong., 1st Sess. (1971), which became Public Law 92-129, was drafted considerably before the effective date of the wage-price freeze on August 15, 1971. The Senate consideration of, and vote on, the conference report on H. R. 6531 was the only action taken on the floor of either house of Congress after the effective date of the wage-price freeze. During that consideration, Senator Cannon, on September 15, 1971, said:

"Mr. President, in light of the present action on the wage-price freeze and what is likely to occur afterward, it is probable that this is the only military bill that will come before the Senate in this session. The military are long overdue in their need for a pay raise, to make their pay comparable to that of others throughout the country. I think they are hurt as badly as anyone by reason of the freeze that is in effect at this time.

"So I urge Senators to vote for the conference report and to give the military a pay raise, when it can be granted. That, of course, will be after the freeze has been lifted. It is a pay raise for which they are long overdue." (117 Cong. Rec. S 14354) (Underlining added.)

On September 21, 1971, Senator Dole said that:

"A decision on applying the wage-price freeze to the military pay increases will be deferred until passage of the bill in its present form." (117 Cong. Rec. S 14663)

The immediate implementation of the military pay raises authorized by Public Law 92-129, when virtually all other pay raises were frozen, would have substantially undercut the comprehensive freeze policy embodied in the Economic Stabilization Act of 1970. We believe the above-quoted statements clearly indicate acceptance by Congress of the President's action under Executive Order No. 11,615. Further they acknowledge that the wage-price freeze would be applicable to all of the proposed increases in Public Law 92-129 and that the President could extend the freeze to such increases if he so desired.

In the light of the legislative history and in the absence of a statutory enactment clearly intending to modify, supersede, or limit, in some way, the broad authority vested in the President by the Economic Stabilization Act of 1970, supra, or the action taken by him under that law, it is our view that the President's action

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to freeze salaries and wages, including military pay and allowances, at rates in effect prior to imposition of the wage-price freeze is authorized by law notwithstanding Public Law 92-129, which prescribed higher rates for military personnel. The fact that one provision subject to that freeze was to have had a retroactive effect but for the freeze does not appear to alter that conclusion in view of the broad authority of the 1970 act.

Accordingly, the action taken in decision of July 7, 1972, 52 Comp. Gen. 15, is sustained.

R.F.KELLEY

Deputy Comptroller General  
of the United States