

DOCUMENT RESUME

02576 - [A1752764]

[Termination of Separate Maintenance Allowance]. D-186478. June 15, 1977. 3 pp. + enclosure (1 pp.).

Decision re: John E. Wish; by Robert F. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of Defense: Defense Attache Office, Saigon (South Vietnam).

Authority: 5 U.S.C. 5924. Department of State Standardized Regulations, sec. 264-265.

An appeal was made of a denial of a claim for separate maintenance allowance in connection with temporary duty performed by an employee evacuated from Saigon to Philippines. Such allowances terminate when the employee commences travel incident to transfer from his post where the allowance was granted. Since he was evacuated from his post and quarters, and was not expected to return thereto, his claim was denied. The denial was sustained. (Author/DJM)

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Mr. Hubert
Civ. Pers.

DECISION



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

FILE: B-186478

DATE: June 15, 1977

**MATTER OF: John E. Wish - Termination of separate
maintenance allowance**

DIGEST: Employee was denied separate maintenance allowance for period of temporary duty in foreign areas after evacuation from Saigon, Vietnam, and before return to United States and claims allowance on grounds that allowance was continued during temporary duty assignments prior to evacuation. Claim is denied since employee relinquished quarters at post and was not ordered to return thereto.

This action concerns an appeal dated December 3, 1976, by Mr. John E. Wish from the denial by our Claims Division of his claim for a separate maintenance allowance in connection with certain temporary duty which he performed as an employee of the Defense Attache Office (DAO).

The record indicates that on August 4, 1974, Mr. Wish entered on duty with DAO in Saigon, Vietnam. On April 6, 1975, Mr. Wish was evacuated from Vietnam and assigned to temporary duty for 14 days at Clark Air Force Base, Philippines, from whence he was to travel to Travis Air Force Base, California, for processing and transfer to Philadelphia, Pennsylvania. The temporary duty assignment was subsequently extended for an additional period, ending on May 20, 1975. While stationed in Saigon, Mr. Wish received a separate maintenance allowance which was terminated upon his evacuation on April 6, 1975. Believing that the allowance was wrongfully discontinued for the period during which he was performing temporary duty away from the continental United States, Mr. Wish submitted a claim in the amount of \$355.50 for the period from April 6 to May 20, 1975.

By Settlement Certificate No. Z-2617024, dated November 4, 1976, our Claims Division denied Mr. Wish's claim on the grounds that under section 264.2 of the Department of State Standardized Regulations (Government Civilians, Foreign Areas) a separate maintenance allowance terminates when the employee commences

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travel incident to a transfer from the post at which the allowance had been granted. Noting that Mr. Wish began evacuation travel on April 6, 1975, the Claims Division concluded that the allowance had been properly terminated. Mr. Wish has appealed the settlement contending that since the allowance had been continued during previous temporary duty assignments away from Saigon it should have been continued for the period of post-evacuation duty.

Section 5924 of title 5, United States Code, authorizes payment of a separate maintenance allowance to an employee who is assigned to a duty post in a foreign area and is compelled to maintain his spouse or dependents elsewhere because of dangerous, notably unhealthful, or excessively adverse living conditions at the post. Implementing regulations are contained in the Department of State Standardized Regulations (Government Civilians, Foreign Areas). Section 265 thereof provides that the allowance shall continue during the absence of the employee from the post, provided that he maintains quarters at the post, and unless the allowance is terminated under the provisions of section 264 of the Standardized Regulations. Thus, although the record does not otherwise substantiate Mr. Wish's contention that his allowance was continued during prior periods of temporary duty, section 265 would provide authority for a continuation during such periods. With respect to the period of the present claim, however, we note that Mr. Wish evacuated his living quarters in Saigon on April 6, 1975. Since Mr. Wish was thus evacuated from his post and quarters, and was not ordered or expected to return thereto, this matter is not governed by the continuation provisions of section 265 but by section 264 which provides for termination of the allowance.

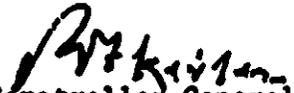
Section 264.2 of the Standardized Regulations states that a separate maintenance allowance shall terminate when an employee is transferred as of the date he commences travel, the effective date of the transfer order when no travel is required, or the date he relinquishes his quarters, whichever is earliest. In the present case, although temporary duty orders, rather than transfer orders, were issued, since such orders did not provide for return to Saigon, it is clear that a permanent change of duty station was intended. Since Mr. Wish relinquished his quarters and commenced evacuation

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travel on April 6, 1975, the allowance was properly terminated as of that date.

In addition, section 264.4 provides that the head of an agency may terminate the allowance at any time prior to the termination dates otherwise prescribed by section 264. In the present case, the Secretary of Defense acted in August 1975 to terminate payment of separate maintenance allowances for former DAO employees evacuated from Saigon "as of the close of business of the day of the employee's departure from the post." Pursuant to section 264.4, this action effectively terminated Mr. Wish's separate maintenance allowance and provides an alternative basis to conclude that the discontinuation of the allowance after that date was proper.

Accordingly, we sustain the denial by our Claims Division of this claim.


Acting Comptroller General
of the United States

Wm. Heubert
CP

JUN 15 1977

Director, Claims Division

Comptroller General ^{R.F. KELLER}

Mr. John E. Wish - Separate Maintenance Allowance -
B-186478-O.M.

Returned herewith is your file No. 2-2627024, forwarded on March 8, 1977, for our consideration of the appeal by Mr. John E. Wish of your denial of his claim for a separate maintenance allowance. That denial is sustained by our decision of today, B-186478, copy attached.

Attachments