

DOCUMENT RESUME

03792 - [A2834060]

Station Housing Allowances. B-161180. September 30, 1977. 4 pp.

Decision re: Acting Assistant Secretary, Department of the Air Force; by Robert K. Keller, Acting Comptroller General.

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

Contact: Office of the General Counsel: Military Personnel.

Budget Function: National Defense: Department of Defense - Military (except procurement & contracts) (051).

Authority: (P.L. 91-486; 84 Stat. 1085). 37 U.S.C. 405. 32 Comp. Gen. 315. 32 Comp. Gen. 527. 33 Comp. Gen. 174. 40 Comp. Gen. 242. 47 Comp. Gen. 127. 33 Comp. Gen. 505. B-154781 (1964). B-157955 (1965). Friedlander v. United States, 120 Ct. Cl. 4 (1951). 1 J.T.R., Appendix D, para. 5a(2).

The Acting Assistant Secretary of the Air Force for Manpower and Reserve Affairs requested an opinion as to whether the rates of station housing allowances payable to members assigned to Rota, Spain, could be amended retroactively to correct an administrative error made in computing those rates. Since the regulation was based on clearly erroneous information and did not represent a judgment arrived at upon a consideration of the actual circumstances involved, a retroactive adjustment may be made. (Author/SC)

4060
03792

DECISION



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

LE: B-161180

DATE:

SEP 30 1977

MATTER OF: Station Housing Allowances

DIGEST: Where a regulation was based upon clearly erroneous information and did not represent a judgment arrived at upon a consideration of the actual circumstances involved, an exception to the general rule prohibiting retroactive adjustment or application of a regulation may be allowed. Therefore, where station allowances are erroneously reduced due to a devaluation of the Spanish peseta for a station where housing costs are based on United States dollars, not pesetas, the allowances may be retroactively corrected.

This action is in response to a letter dated January 24, 1977, from the Acting Assistant Secretary of the Air Force (Manpower and Reserve Affairs), requesting our opinion as to whether the rates of station housing allowances payable to members assigned to Rota, Spain, may be amended retroactively to correct an administrative error made in computing those rates. The request was forwarded to this Office by letter dated January 28, 1977, from the Per Diem, Travel and Transportation Allowance Committee (Control No. 77-3).

It is asserted in the submission that on February 10, 1976, the Chief of the Joint United States Military Group, Madrid, Spain, who is charged with the responsibility of monitoring all housing allowance reports for members of the uniformed services in Spain, advised the Per Diem, Travel and Transportation Allowance Committee (PDTATAC) that the Spanish peseta had been devalued by 10.5 percent on February 9, 1976, and recommended a corresponding decrease in the station housing allowance for all locations in Spain to reflect the improved position of the United States dollar. This report was made pursuant to Appendix D, paragraph 5c(2), Volume 1, Joint Travel Regulations (1 JTR). Acting upon that report the PDTATAC reduced the existing allowances for all locations in Spain effective February 27, 1976 (change 279, 1 JTR). The delay in the reduction was due to administrative processing and approval by the Secretaries concerned. Subsequent to the reduction it was reported to the PDTATAC that the change in the peseta exchange

djt

B-161180

rate had no effect on members residing in rental guarantee housing at Rota, Spain, since these members paid their rent and utilities, except for electricity, in United States dollars. This fact had not been considered by the PDTATAC staff in computing and recommending reduced station allowances at Rota, Spain. Accordingly, effective March 17, 1976 (change 280, 1 JTR), the PDTATAC reestablished the allowances previously applicable to members in "Rental Guarantee Housing" at Rota. It is asserted that the allowances should not have been reduced for the 18 days involved and that the members concerned should not be required to bear the financial loss caused by administrative error. Doubt has been expressed by the PDTATAC as to whether the reduction of February 27, 1976, could be set aside or the restoration order of March 17, 1976, applied retroactively in view of the decision of this Office in 32 Comp. Gen. 315 (1953). In view of the doubt the Acting Assistant Secretary asks the following:

"An expression of your views as to whether a retroactive adjustment in this case is permissible is requested. If a retroactive adjustment is not permissible may the reduction order of 27 February 1976 and the restoration order of 17 March 1976 for Rental Guarantee Housing at Rota, Spain be canceled, thus allowing the original allowance of 16 December 1975 to stand unchanged."

This Office has long and consistently adhered to the rule that when regulations are properly issued rights thereunder become fixed and, although such regulations may be amended prospectively to increase or decrease rights given thereby, they may not be amended retroactively except to correct obvious errors. 32 Comp. Gen. 315 (1953); 32 *id.* 527 (1953); 33 *id.* 174 (1954); 40 *id.* 242 (1960); and 47 *id.* 127 (1967). Compare 33 Comp. Gen. 306 (1954). Compare Friedlander v. United States, 120 Ct. Cl. 4 (1951). Also, where it is shown that a determination made was based on erroneous information or observation and thus did not represent a judgment arrived at upon a consideration of the actual circumstances involved, a retroactive adjustment or application has been allowed. See B-154781, August 12, 1964, and B-187855, December 10, 1965.

Station housing allowances are authorized under 37 U.S.C. 405 (1970) for members on duty outside of the United States or in Hawaii or Alaska. These allowances were designed to defray the high cost

B-161100

of living experienced by certain members of the uniformed services while on permanent duty in high cost areas overseas. Prior to October 23, 1970, the statute made no specific provision for the method of computing the station housing allowances. However, on that date 37 U.S.C. 406 was amended adding the following language concerning computation of station allowances:

"A station housing allowance may be prescribed under this section without regard to costs other than housing costs and may consist of the difference between basic allowance for quarters and applicable housing cost. Housing cost and allowance may be disregarded in prescribing a station cost of living allowance under this section."
Public Law 91-486, October 23, 1970, 84 Stat. 1083.

In 32 Comp. Gen. 318, supra, to which the submission refers, there was considered a somewhat similar situation in which station allowances were established at higher rates for Manila, than for the rest of the Republic of the Philippines, based on cost-of-living data erroneously assumed to relate only to Manila. Subsequently, it was learned that such data also related to adjoining suburbs and that the living costs in both areas were virtually identical. Therefore, it was proposed to retroactively designate the higher Manila rates as applicable to the suburbs also.

In rejecting that proposal we stated that the regulations issued were complete and unambiguous on their face when issued and, while the committee charged with their preparation "may not have made as comprehensive an analysis of the cost of living data * * * as might have been desirable" their action did not appear to result in obvious error which could be retroactively corrected. That decision was based on the broadly worded statute as it existed prior to the 1970 amendment.

In the present case, the reduction of the housing allowance for members in Rota, Spain, in change 279, 1 JTN, was based upon a devaluation of the Spanish peseta upon the erroneous assumption that the rent for the "Rental Guarantee Housing" in Rota was paid in Spanish pesetas where in fact the rent was a United States dollar obligation unaffected by changes in the currency exchange market of the Spanish peseta. As is indicated above, the current more specific language of 37 U.S.C. 406 provides

B-161180

that the housing allowance may consist of the difference between basic allowance for quarters and "applicable housing costs." Since the applicable costs for "Rental Guarantee Housing" at Rota are calculated in dollars, the reduction of the station housing allowance based on a devaluation of the pesos was an obvious administrative error which would result in a substantial loss to the members involved, contrary to the purpose of the law. Therefore, the error in this case, unlike 32 Comp. Gen. 318, is not merely one involving an inadequate analysis of cost data. Instead, it involves a substantial administrative error in the basic computation upon which the allowance is based.

Accordingly, it is our view that the adverse effect arising through oversight or misinformation in the promulgation of change 278, 1 JTR, reasonably may be viewed as obvious error which may be administratively corrected retroactively.

In view of the foregoing, this Office would interpose no objection to a retroactive adjustment or an appropriate cancellation of the erroneous rate changes as requested in the submission, whichever is more administratively feasible. The questions are answered accordingly.

R. F. KELLER

Acting Comptroller General
of the United States