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DECISION

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

9049

FILE: B-193787

DATE: February 5, 1979

MATTER OF: [Station housing and cost-of-living allowances]

DIGEST: Where a member lives with dependents in the vicinity of his duty station outside the United States, and the duty station is reclassified as a restricted area so as to require that dependents be relocated to another designated place outside United States, or in Hawaii or Alaska, GAO has no objection to a proposed amendment to the Joint Travel Regulations to provide for station housing and cost-of-living allowances while dependents reside at the new designated place and the member remains at the restricted duty station.

This action is in response to a letter dated December 1, 1978, from the Principal Deputy, Assistant Secretary of the Air Force (Manpower, Reserve Affairs and Installations), requesting a decision as to whether the Joint Travel Regulations (JTR) could legally be amended to provide entitlement to members station housing and cost-of-living allowances for their dependents in the described circumstances.

Incident to a reduction in size of an overseas base, the Air Force determined that it would no longer maintain family-type quarters at the base. Since the station involved was an island which had limited economy-type housing available, the station was declared a restricted area, and the dependents of members stationed there were relocated to a place outside the United States away from the vicinity of the member's duty station. A question arose as to the propriety of changing the JTR to authorize housing and cost-of-living allowances while the dependents reside at the new designated place on the same basis as that currently provided in 1 JTR, paragraph M4305-2b, which provides for station allowances in connection with reassignments from an overseas non-restricted area to an overseas restricted area.

The dependents in this situation were relocated to Hawaii under 37 U.S.C. 406(h) (1976) implemented by 1 JTR, paragraph M7103-2 (Change 301, March 1, 1978) which provides in part:

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"The types of cases in which transportation of dependents may be authorized under this paragraph are limited to those which meet the following conditions:

* * * * *

"5. lack of adequate * * * housing for dependents when supported by a statement of the approving authority that the inadequacy of such * * * housing was caused by conditions beyond the control of the member and arose after commencement of travel of dependents to the member's overseas station;"

There is currently no provision which authorizes cost-of-living and housing allowances while the dependents reside at the new designated place. However, 1 JTR, paragraph M4305 provides in part:

"1. GENERAL. A member with dependents who is reassigned from a permanent duty station outside the United States to a permanent duty station in a restricted area outside the United States may be authorized to receive station allowances as provided in this paragraph. * * *

"2. REASSIGNMENT FROM AN OVERSEAS NONRESTRICTED AREA TO A RESTRICTED AREA

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"b. Dependents Move to a Designated Place. If dependents move to a designated place, the member may receive station allowances, applicable to the designated place, as a member with dependents subject to the following conditions:

"1. authorization by the Secretary of the service concerned or his designated representative, and

- "2. when supported by a copy of the dependent travel authorization issued in accordance with par. M7005-3 and by a statement of the member that the dependents have actually established a residence at the authorized designated place outside the United States."

It is proposed that the JTR be amended to provide a similar authority where the member's duty station changes from a non-restricted area to a restricted area.

The statute authorizing station allowances, 37 U.S.C. 405 (1976), is a broadly written statute which provides for increased cost-of-living allowances, as authorized by the Secretaries concerned, incident to a duty assignment outside the United States or in Hawaii or Alaska.

In 49 Comp. Gen. 548 (1970), we were asked whether the JTR could legally be amended to authorize the payment of station allowances in the case of a member whose dependents made an authorized move from a place in the United States, as defined in the regulations, to a designated place in Alaska, Hawaii, Puerto Rico, or a territory or possession of the United States upon his permanent change of station from a duty station in the United States to a restricted area. We stated the view that no authority exists for payment of station allowances under 37 U.S.C. 405 on account of dependents if the dependents' residence outside the United States has no connection with the member's duty assignment or that "their overseas residence is purely a matter of personal choice and, as such, is separate and apart from the member's overseas duty." 49 Comp. Gen. 548, 550. In the present case, the move to Hawaii is connected with and related to the member's duty station changing from a nonrestricted area to a restricted area. It is not purely a matter of personal choice. The test in 49 Comp. Gen. 548, *supra*, provides protection against unwarranted abuse of entitlements payable to members under 37 U.S.C. 405. See 56 Comp. Gen. 525 (1977). Since the member's dependents had no choice but to relocate when the station was reclassified, there would be no abuse of entitlements under 37 U.S.C. 405.

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That statute is sufficiently broad to support a carefully drawn regulation which would provide allowances in cases where the member's duty station does not change, but is reclassified from a nonrestricted area to a restricted one. Accordingly, when dependents are living with the member in the vicinity of his duty station and are relocated to a designated place outside the United States or in Hawaii or Alaska incident to reclassification of the member's duty station, appropriate allowances under 37 U.S.C. 405 may be paid.


Deputy Comptroller General
of the United States