

DECISION



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

FILE: B-195670

DATE: December 14, 1979

Request for
MATTER OF: Basic allowance for quarters]-
Service member married to service member

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- DIGEST: 1. Two service members married to each other were granted permission to live off base in accordance with service policy, and were paid basic allowance for quarters (BAQ) since family-type Government quarters were not available. Although they later indicated that the only reason they were married was to get permission to live off base and receive BAQ and that they only lived together for a short time, the BAQ payments may not be recouped since they were validly married, they were authorized to live off base, and they were not assigned to Government quarters.
2. Two service members married each other for the admitted purpose of being allowed to live off base and being paid basic allowance for quarters (BAQ) under a service policy which authorizes such a procedure to encourage the maintenance of the family unit when Government family-type quarters are not available. In such a case the members should be assigned single-type Government quarters, if available, which would discontinue BAQ payments since there is no family unit to maintain.

This case involves the propriety of paying basic allowance for quarters (BAQ) to two service members married to each other who indicate that their reason for marrying was to be allowed to live off base in civilian quarters and be paid BAQ. We find that they are entitled to BAQ as long as they are not assigned to Government quarters. However, in the circumstances of this case the service policy of allowing members married to each other to live off base when family quarters are not assigned to them would not prevent assigning these members to single-type Government quarters with concurrent cessation of BAQ payments.

The matter was presented by Captain W. M. Bedor, USAF, Chief Accounting and Finance Branch, Comptroller Division,

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Headquarters 46th Aerospace Defense Wing (ADCOM), Peterson Air Force Base, Colorado, concerning payments of BAQ to two airmen, married to each other, assigned to Peterson Air Force Base. The Department of Defense Military Pay and Allowance Committee approved the submission and assigned it number DO-AF-1329. D1902?

The facts of the matter are that a female airman was assigned to Peterson Air Force Base early in September 1977, shortly after which she met a male airman also assigned there whom she married on September 16, 1977, in Colorado Springs, Colorado. They requested and were authorized to live off base effective September 19, 1977, at which time they both became eligible to receive BAQ at the without dependent rate. They lived together for approximately 2 months, October and November 1977, and then separated. They again lived together in November and December 1978 and again separated. Apparently as a result of an Air Force investigation, both members furnished statements indicating that the principal reason for their marriage was so that they could live off base and receive BAQ. Their statements indicate that they did not marry for the purpose of maintaining a family unit.

The female member was assigned to Government quarters effective March 6, 1979, and payment of BAQ at the without dependent rate to her was stopped. Although the male member was not assigned to Government quarters, and apparently he continued to live off base, BAQ payments at the without dependent rate to him were stopped effective April 1, 1979, because of the finance officer's doubt as to whether further payment is proper.

In view of these circumstances, the finance officer asks whether the members' marriage was valid for the purpose of BAQ entitlement, and if it was not valid, should previous BAQ payments retroactive to September 19, 1977, be collected from them. If the marriage is considered valid for BAQ purposes, the finance officer questions whether BAQ paid to the members when they did not live together should be collected from them.

The authority for payment of BAQ is found in 37 U.S.C. 403 (1976), which provides generally that a member who is entitled to basic pay is entitled to BAQ unless assigned to Government quarters appropriate to his grade, rank, or rating and adequate for himself and his dependents, if with dependents.

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Concerning the matter of assignment to Government quarters and payment of BAQ to members married to members, Department of Defense Instruction No. 1338.1, April 18, 1974, provides in paragraph IIIA as follows:

"It is the policy of the Department of Defense to encourage maintenance of the family unit. When both husband and wife are members of the Uniformed Services, and stationed at the same or adjacent military installations, both members are authorized the basic allowance for quarters prescribed for a member without dependents when public quarters for dependents are not assigned, notwithstanding the availability of adequate quarters for either or both."

That policy is implemented in Department of Defense Military Pay and Allowances Entitlements Manual (DODPM), Table 3-2-4. Rule 11 of that table provides that when both members are assigned to the same or adjacent bases and they are not assigned to family-type Government quarters, they are both entitled to BAQ at the without dependent rate.

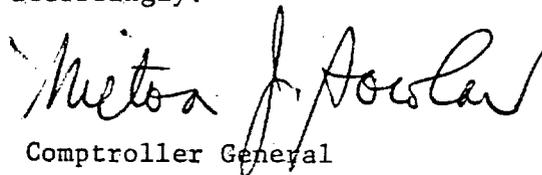
In the present case the members were apparently validly married to each other under Colorado law. In accordance with the Department of Defense policy set out in Instruction No. 1338.1, since they were not assigned Government family-type quarters, they were authorized to live off base. In such circumstances they were entitled to BAQ at the without dependents rate pursuant to 37 U.S.C. 403 and DODPM, Table 3-2-4, Rule 11. Whatever the motive for their marriage may have been, we do not believe that there is sufficient basis to recoup the BAQ paid to them. As a matter of fact, these members were authorized to live off base. They were not assigned Government quarters. Therefore, they were entitled to BAQ. In addition the male member is entitled to continue to be paid BAQ at the without dependent rate until he is assigned to Government quarters, as was the female member. DODPM, Table 3-2-3, Rule 1.

It appears that the proper course of action in a case such as this, where it is clear that the members have no further intention of maintaining a family unit, is for the service to assign them to single-type Government quarters, if available, in which case regular BAQ would no longer be payable. That

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course of action is not prohibited by the Department of Defense policy referred to previously concerning payment of BAQ to members married to members since that policy is based on encouraging maintenance of the family unit a purpose which would not be served by permitting the members here involved to live off base.

The questions are answered accordingly.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For The Comptroller General
of the United States