

DECISION



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

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DKM-11
Mr. Kramer

FILE: B-195691

DATE: January 8, 1980

MATTER OF: Lieutenant William R. Miller, USCGR

DIGEST: An amendment to Executive Order No. 11,157 by Executive Order No. 12,094 redefined sea duty for basic allowance for quarters (BAQ) purposes; however, the amendment did not affect the Secretaries of the armed services authority to issue supplemental regulations not inconsistent with the Executive orders. A Coast Guard member contends that he is entitled to receive BAQ in light of the new definition, while on sea duty for over 3 months, during which he spent a few days on shore. Since the claimant would not be entitled to receive BAQ under the supplemental regulations issued by the Coast Guard and since those regulations rationally effectuate 37 U.S.C. 403(c) which prohibits payment of BAQ to member without dependents who are on sea duty for 3 months or more, and the Executive orders, the claim is denied.

ENTITLEMENT TO

The issue is whether a member of the United States Coast Guard is ~~entitled to receive payment of basic allowance for quarters (BAQ)~~ as a member without dependents for the period he was deployed from his permanent duty station and was assigned to temporary additional duty (TAD) on board a United States vessel. For the reasons stated below BAQ at the without dependent rate may not be authorized for the period in question.

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The question was presented by letter from Mr. E.J. Rowe, Authorized Certifying Officer, United States Coast Guard, and was assigned Control No. ACO-CG-1330, by the Department of Defense Military Pay and Allowance Committee. - (54)

Lieutenant William R. Miller, United States Coast Guard Reserve, is attached to the Polar Operations Division permanently stationed at the Coast Guard Aviation Training Center, Mobile, Alabama. As part of his duties with the Polar Operations Division he is routinely deployed on TAD to a vessel for extended periods of time. In the present situation, he was deployed, as a member of a helicopter detachment, on TAD

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to the United States Coast Guard Cutter Glacier and any such place as directed by the Commanding Officer of the Glacier. The approximate duration of this duty was 150 days. While the Glacier was operating in Antarctica, Lieutenant Miller received further TAD orders to McMurdo Station, Antarctica. Except for the travel time to and from Mobile, during the period in question (November 8, 1978-April 11, 1979) Lieutenant Miller served on board the Glacier except for 3 short periods of 2 to 4 days at McMurdo Station. During the period of his duty on board the Glacier and at McMurdo station he was furnished Government quarters.

While Lieutenant Miller is at his permanent duty station, Mobile, he is entitled to receive BAQ at the without dependent rate since suitable Government quarters are not available for him there. 37 U.S.C. 403 (1976). Every time he leaves Mobile on this type of TAD assignment, however, his BAQ is terminated pursuant to 37 U.S.C. 403(c), since he is then considered to be on sea duty for a period of 3 months or more.

Lieutenant Miller argues that this is a hardship on him, a member without dependents, since he is purchasing a house at his permanent station which he bears the expense of maintaining whether or not he is on TAD. The financial burden on him increases when his BAQ is reduced to the partial rate during his TAD (sea duty) periods.

However that may be, BAQ is an allowance which is ordinarily only paid in lieu of furnishing a member Government quarters and may not be paid to a member without dependents who is on sea duty for 3 months or more.

Section 403(c) of title 37, United States Code, provides in part that a member of a uniformed service without dependents is not entitled to BAQ while he is on sea duty. It further provides that duty for a period of less than 3 months is not considered to be sea duty. Section 403(g) of that title authorizes the President to prescribe regulations for the administration of section 403, including definition of the words "sea duty." Pursuant to that authority, the President, in section 401(c) of Executive Order No. 12,094, 3 C.F.R. 251, 252 (1979), amending section 401(c) of Executive Order No. 11,157, 29 Fed. Reg. 973 (1964), defined the term sea duty for BAQ purposes as meaning service performed by either an officer or enlisted member in a self-propelled vessel that

is in active status, in commission or in service and is equipped with berthing and messing facilities.

Thus, the underlying issue is whether Lieutenant Miller was on sea duty during the entire time period in question. Lieutenant Miller contends that he was not and is therefore entitled to receive BAQ for this time period. His argument is based on the reasoning that he was not on sea duty, as defined in the above Executive order, for more than three continuous months. In other words, he contends every time he left the Glacier to perform duty ashore at McMurdo station the three-month period in 37 U.S.C. 403(c) was broken since he was no longer performing service in a self-propelled vessel. To complete the argument, Lieutenant Miller contends that a new three-month period commenced every time he returned to temporary duty aboard the vessel.

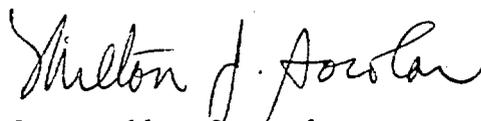
As indicated above, Executive Order No. 12,094 amended Executive Order No. 11,157 with regard to the payment of BAQ and the definition of sea duty. Section 407 of Executive Order No. 11,157, however, authorizes the Secretaries of the uniformed services to prescribe such supplementary regulations not inconsistent with the Executive order as may be deemed desirable and necessary for carrying out the regulations. While Executive Order No. 12,094, amended Executive Order No. 11,157, it did not affect the Secretaries' authority to issue regulations.

Supplemental regulations of the Coast Guard are contained in Volume 2, Section B, of the Coast Guard Comptroller Manual. Table 2B0130-2, rule 5 of the Manual provides that when a member is on sea duty and during such period his permanent duty station remains unchanged then BAQ accrues if such duty is TAD of less than 3 months and the member was entitled to BAQ at his permanent station prior to departure for such duty. Note 4 to rule 5 provides, however, that if the TAD extends for a period of 3 months or more then BAQ is not payable for any portion of such period. Under the above regulation Lieutenant Miller would not be entitled to BAQ since he was on sea duty and such duty was TAD which extended for a period of more than 3 months.

In order for Lieutenant Miller to be entitled to receive BAQ, therefore, it must be found that the above regulation is inconsistent with either 37 U.S.C. 403(c) or Executive Order No. 12,094. The regulation cannot be said to be inconsistent with the statute since it is implementing the 3-month rule laid down by the statute. Nor is the regulation inconsistent with the new definition of sea duty found in Executive Order No. 12,094, which no longer ties sea duty for BAQ purposes to payment of sea duty pay. See: Executive Order No. 11,157, section 401(c). Absent any indication to the contrary, it cannot be said that the amendment was intended to allow the payment of BAQ in the present situation. This is especially true in light of the fact that Congress, in passing 37 U.S.C. 407(c), intended that BAQ not be paid to any member assigned to sea duty for more than 3 months. While during his approximately 5-month assignment to the Glacier Lieutenant Miller performed duties for a few days on shore, the vast preponderance of his duty was performed in the Glacier. We believe the Coast Guard has properly classified his TAD during this period as sea duty for over 3 months. Compare 27 Comp. Gen. 432, 436 (1948).

In our view the Coast Guard regulation is in accord with the language of and rationally effectuates 37 U.S.C. 403(c) and Executive Orders Nos. 11,157 and 12,094. Accordingly, we conclude that Lieutenant Miller is not entitled to BAQ for the time period he claims.

If payment of BAQ to members in the described situation is considered desirable by the Coast Guard, the matter should be presented to Congress for enactment of authorizing legislation.



For The Comptroller General
of the United States