

DECISION

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

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FILE: B-214731**DATE:** September 4, 1984**MATTER OF:** Private Vaughn Desha, USMC**DIGEST:**

A Marine Corps member received a general court-martial sentence which included confinement at hard labor for 5 years, and forfeiture of pay, but he was entitled to continue receiving basic allowance for quarters at the with-dependents rate. He was subsequently transferred from his duty station at Camp Lejeune, North Carolina, to the Correctional Facility at Camp Pendleton, California, for confinement. He is not entitled to receive a variable housing allowance based on his transfer to the Correctional Facility because he was assigned there for confinement not "for duty" as required by statute.

This action responds to a request for an advance decision as to the propriety of paying a variable housing allowance to an enlisted Marine Corps member who is confined under general court-martial orders.^{1/} We conclude that while he is in confinement, the member is not assigned to duty and, therefore, he may not be paid a variable housing allowance.

Background

In May 1983 Sergeant Vaughn Desha, USMC, was convicted and sentenced by general court-martial to be dishonorably discharged from the service, to be confined at hard labor for 5 years, to forfeit all pay and to be reduced to pay grade E-1 (Private). His sentence was approved by the Convening Authority in July 1983, and on October 11, 1983, a permanent change-of-station order was issued for his

^{1/} The request for advance decision was submitted by Lieutenant Colonel M. K. Chetkovich, Disbursing Officer, U.S. Marine Corps, Camp Pendleton, California. The request was approved by the Per Diem, Travel and Transportation Allowance Committee and assigned control number 84-4.

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transfer as a prisoner from his duty station at the Marine Corps Base, Camp Lejeune, North Carolina, to the Correctional Facility at the Marine Corps Base, Camp Pendleton, California, the place designated for his confinement.

Under Private Desha's sentence his pay was forfeited, but not his entitlement to allowances, which in his case consisted of a basic allowance for quarters at the with-dependents rate, and a variable housing allowance (if applicable). The Disbursing Officer advises that, for a member at pay grade E-1 who has dependents, the variable housing allowance rate at Camp Lejeune (Private Desha's duty station prior to his confinement), was zero, but at Camp Pendleton the monthly variable housing allowance rate for a member at pay grade E-1 who has dependents was \$117.70 through December 1983, and \$102.67 effective January 1, 1984.

The Disbursing Officer notes that payment of a variable housing allowance to Private Desha at the Camp Pendleton rate when he was transferred there for the purpose of confinement would appear to constitute a financial benefit to him as a result of his wrongful acts. The Disbursing Officer also indicates that the regulations implementing the variable housing allowance provide that the allowance is payable based on the permanent duty station to which the member is assigned. Joint Travel Regulations, vol. 1 (1 JTR), paras. M4550, M4553, and Appendix J (definition of permanent (duty) station). Thus, she raises the question whether Private Desha is entitled to be paid a variable housing allowance at the rate applicable to Camp Pendleton in view of the fact that he was assigned there for confinement rather than for duty, or whether his entitlement to the allowance should be based on the rate applicable to Camp Lejeune, his permanent duty station prior to his incarceration.

Analysis

Variable housing allowance is authorized by 37 U.S.C. § 403(a)(2) (1982), and implemented by the Joint Travel Regulations. Under the statute a member of a uniformed service who is entitled to a basic allowance for quarters is also entitled to a variable housing allowance if the member is "assigned to duty in an area of the United States (other than Alaska and Hawaii) which is a high housing cost area with respect to such member." 37 U.S.C. § 403(a)(2)(A).

The purpose of the variable housing allowance is to assist members who are assigned to duty in high housing cost areas in the United States by providing an additional allowance when the housing cost for the area to which they are assigned exceeds their basic allowance for quarters entitlement by 15 percent or more. 37 U.S.C. § 403(2)(B) and 1 JTR para. M4550. Thus, under the statute and regulations, to be entitled to a variable housing allowance, a member must be entitled to basic allowance for quarters (that is, not assigned to Government quarters adequate for himself and his dependents), and "assigned to duty" in a high cost area.

Apparently Private Desha's dependent is not being provided Government quarters, and it is on that basis that he claims entitlement to basic allowance for quarters. The question then is whether Private Desha's confinement serving a sentence of 5 years at hard labor at the Correctional Facility is considered an assignment to duty within the meaning of the statute and regulations.

As a general matter, a service member undergoing confinement pursuant to a court-martial sentence is not considered to be performing military duty. Cf. 3 Comp. Gen. 342, 343 (1923); and David G. Saulter, 59 Comp. Gen. 12, 13 (1979) (referring to "restoration to duty" following confinement). Moreover, in the somewhat analogous situation of a member transferred to a hospital for observation and treatment, we have held that the hospital may not be considered the member's duty station since no duty is required of him there and, therefore, such a transfer may not be considered a permanent change of station. 48 Comp. Gen. 603, 604 (1969), and cases cited therein. Our position was based on the principle that the station of a member of the uniformed services is considered to be the place where he is assigned for duty, and transfer to a station where no duty is required of him does not constitute that place his duty station.^{2/}

^{2/} We did not object to a regulation authorizing transportation allowances under certain conditions for members transferred to a hospital for long-term hospitalization "as for a permanent change of station;" but we specifically refused to approve a change in regulations which would have defined the hospital as a permanent station. 48 Comp. Gen. 603, supra.

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In accordance with the above, it is our view that Private Desha's confinement at hard labor at Camp Pendleton pursuant to a court-martial sentence does not constitute an assignment to duty there within the meaning of 37 U.S.C. § 403(a)(2)(A). Therefore, he is not entitled to a variable housing allowance.

for Milton J. Aroslan
Comptroller General
of the United States